

[6355-01]

CONSUMER PRODUCT SAFETY COMMISSION

[Petition No. CP-77-8; CP-77-14, CP-77-15]

**ARCHITECTURAL GLAZING MATERIAL
Denial of Petitions**

AGENCY: Consumer Product Safety Commission.

ACTION: Denial of petitions.

SUMMARY: The Commission has denied petitions from the National Association of Home Builders, the National Lumber & Building Material Dealers Association, and the Mahoney Sash & Door Co., who petitioned the Commission to exempt certain doors which contain architectural glazing materials from the scope of the Safety Standard for Architectural Glazing Materials.

FOR FURTHER INFORMATION CONTACT:

Harry I. Cohen, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 303-492-6453.

SUPPLEMENTARY INFORMATION: Section 10 of the Consumer Product Safety Act (15 U.S.C. 2059) provides that any interested person may petition the Consumer Product Safety Commission to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety rule. Section 10 also provides that if the Commission denies a petition, it shall publish in the FEDERAL REGISTER its reasons for such denial.

On April 1, 1977, the National Association of Home Builders (NAHB) filed a petition to amend the Safety Standard for Architectural Glazing Materials to exempt openings in glazed doors through which a six-inch diameter sphere is unable to pass.

On June 10, 1977, NLEBMDA filed a petition requesting an amendment to exempt openings in doors through which an eight-inch diameter sphere is unable to pass. This petition was endorsed by NAHB.

On July 6, 1977, Edward A. Mahoney, Jr., of the Mahoney Sash & Door Co., filed a petition requesting an amendment from the standard to exempt traditional wood stile and rail doors from the standard for architectural glazing materials, if the glazing material begins at least 42 inches off the floor.

In the three petitions, the petitioners allege that doors with small panes of glass, or with panes of glass beginning more than 42 inches off the floor, do not present the risks of injury that the standard was designed to reduce or eliminate. The petitioners also allege that the standard increases the cost for such doors out of proportion to the benefits, and that the utility and availability of substitute glazing materials are inadequate.

After careful consideration of these matters set forth in these petitions, and a review of information currently avail-

able to the Commission on these matters, the Commission has denied these petitions. The Commission has taken this action because it continues to conclude that the products affected by the petitions, if not manufactured in accordance with the Safety Standard for Architectural Glazing Materials, present the unreasonable risks of injury that the standard was designed to reduce or eliminate.

The Commission has reviewed 131 in-depth investigation reports collected during 1975 and 1976 for doors (other than storm doors) with glass panes. Of 126 for which the width of the panes could be determined, 7 of the accidents were associated with panes less than 6 inches wide, and 12 with panes 6.5 to 8 inches wide. Of those reports in which the height of the lowest edge of glazing material was provided, 20 were associated with panes whose lowest edge was 42 inches or more from the floor. Several additional injuries appear to be related to panes whose lowest edge is approximately 42 inches off the floor, although no measurements were provided. All the accidents appear to be of the same type and severity as occur with architectural glazing materials in general, and of the type the standard was designed to reduce or eliminate.

The Commission also determined what body parts could pass through various openings in doors. For adults, a six-inch opening would accept a fist, arm, or leg above the knee. An eight-inch opening could admit a head. A forty-two inch limitation on height could permit upper trunk interaction with the glazing material.

The Commission recognized in issuing the standard that the costs of doors would increase as a result of the standard. However, the Commission has no information, nor have the petitioners provided information, to indicate that there are any significant errors in the cost estimates made at the time of issuance of the standard.

The Commission understands that many doors had been covered by those state safety glazing laws which were in existence prior to the effective date of the standard. Furthermore, various trade organizations have issued voluntary industry standards to require glazing materials complying, first with existing voluntary standards, and now with the Commission's standard. Therefore, complying doors should soon replace non-complying doors in the chain of distribution because of voluntary action and the requirements of the standard.

Finally, the Commission believes on the basis of the information before it that glazing materials that comply with the Commission standard can be obtained for replacing broken glazing material in doors, and that such glazing materials are satisfactory replacements. Replacement materials include prefabricated tempered inserts for standardized doors, laminated glass, and plastic glazing materials.

Accordingly, in accordance with section 10(d) of the Consumer Product Safety Act (15 U.S.C. 2059(d)), the petitions are denied.

Dated: September 26, 1977.

RICHARD E. RAPPS,
Secretary, Consumer
Product Safety Commission.

[FR Doc. 77-28821 Filed 9-30-77; 8:45 am]

[6355-01]

[Petition No. CP 77-5]

**ARCHITECTURAL GLAZING MATERIAL
Denial of Petition**

AGENCY: Consumer Product Safety Commission.

ACTION: Denial of petition.

SUMMARY: The Commission has denied a petition from Robert J. Cunitz, Ph. D., who petitioned the Commission to issue a consumer product safety rule (or an amendment to the Safety Standard for Architectural Glazing Materials, 16 CFR 1201), which would impose requirements for visual barriers on architectural glazing materials used for doors and certain windows, and to modify the design of the impactor used to perform some of the testing required by the standard.

FOR FURTHER INFORMATION CONTACT:

Harry I. Cohen, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301-492-6453.

SUPPLEMENTARY INFORMATION: Section 10 of the Consumer Product Safety Act (15 U.S.C. 2059) provides that any interested person may petition the Consumer Product Safety Commission to commence a proceeding for the issuance, amendment or revocation of a consumer product safety rule. Section 10 also provides that if the Commission denies a petition, it shall publish in the FEDERAL REGISTER its reasons for such denial.

By letters dated November 23, 1976, and January 26, 1977, Dr. Cunitz petitioned the Commission to initiate a proceeding under § 7 of the Consumer Product Safety Act to issue a consumer product safety rule which would require the use of a visual barrier such as decals, etchings, or engravings on any glazing materials used in or as doors, and on any glazing material used for windows, if the bottom edge of the glazing material is located within two and one-half feet of any walking surface, if the height of the glazing material exceeds one foot, and if the width of the glazing material exceeds one foot. Alternatively, the petition requested amendment of the Safety Standard for Architectural Glazing Materials to include requirements for visual barriers for the products described above.

Additionally, the petition requested the Commission to amend the Safety Standard for Architectural Glazing Materials

to modify the design of the item of test equipment which is called an impactor in the standard, and which is used to perform the impact test prescribed by the standard.

In assessing the question of whether to begin a standard development proceeding for a consumer product, the Commission considers whether the product presents an unreasonable risk of injury, whether a standard is necessary and whether the petitioner or other consumers would be unreasonably exposed to a risk of injury presented by the product if the Commission failed to commence the proceeding requested. In determining whether a product presents an unreasonable risk of injury and whether a consumer product safety standard or amendment is necessary to address a risk of injury, the Commission weighs the degree, nature, and frequency of injury or injury potential associated with the consumer product against the potential effect of a standard on the cost, utility, and availability of the product. The Commission also considers the relative priority of the risk of injury associated with the product and the Commission's resources available for rulemaking with respect to that risk of injury (see the procedures for petitioning for rulemaking under section 10 of the CPSA, 16 CFR 1110.11(b)). The Commission policy on establishing priorities for commission action, 16 CFR 1009.8, sets forth the criteria upon which Commission priorities are based.

After careful consideration of the matters set forth in this petition, and a review of all information now available to the Commission about these matters, the Commission has denied the petition. The Commission has taken this action because it concludes that the information available to it which is relevant to the issues raised by the petition is not an adequate basis to support the action requested by the petition.

With regard to the first issue raised by the petition—risks of injury which may result from human impacts with glazing materials in doors and certain windows and in which the impacts do not cause

those materials to break—the Commission has examined reports of in-depth investigations of injuries associated with glazing materials in doors and glazed panels. Of 250 such reports since January 1974, two reports described injuries associated with glazing materials which did not result from the breakage of those materials. In one of these cases, a visual barrier of the type urged in the petition might have prevented the accident. In the other case, such a barrier probably would not have prevented the accident. However, the lack of injury data does not conclusively show that architectural glazing materials that do not break have no injury potential. Because the Commission's standard for glazing materials requires certain glazing to be impacted with 400 foot pounds of energy and either to break with characteristics such that the glazing is less likely to present an unreasonable risk of injury or not to break, it is possible that injury potential due to contact with glazing that does not break may be increased. There is no information, however, that shows that decals, etchings, or engravings on the glazing will prevent accidents from occurring particularly in those situations where the hazard is due to accidentally falling into or through glazing, or due to installing, replacing, storing, or otherwise manipulating the glazing (16 CFR 1201(d)(1)(ii), (iii)). These risks of injury would not appear to be reduced by visual barriers.

The Commission concludes that the portion of the petition requiring that visual barriers be mandated should be denied because of the lack of available information sufficient to establish that the absence of visual barriers for doors and certain windows presents an unreasonable risk of injury; that a mandatory standard requiring such visual barrier is necessary; or that the failure of the Commission to initiate a standard development proceeding to mandate visual barriers would unreasonably expose consumers to a risk of injury presented by doors and certain windows containing architectural glazing materials which do not break when impacted.

With regard to the second issue raised by the petition—the alleged inadequacy of the design of the impactor specified in the standard—the Commission has no information which would confirm or refute the allegations of the petition. Limited studies performed for the Commission (to compare the effects of impacting glazing materials by the use of an anthropomorphic dummy with the effects of impacting glazing materials by the use of the impactor specified in the standard) are inconclusive. However, the impactor designated in the standard has a long history of use in the voluntary industry standard, ANSI Z97.1. In the absence of some information tending to support the allegations concerning the inadequacy of the impactor, the Commission is unable to conclude that use of the impactor specified in the standard, along with the criteria for "passing" the standard results in glazing materials that present an unreasonable risk of injury. On the contrary, in issuing the standard, the Commission concluded that the standard was reasonably necessary to eliminate or reduce an unreasonable risk of injury. In view of the foregoing, the Commission is unable to find that an amendment to the standard concerning the type impactor is necessary. In addition, the Commission believes that based on presently available information, the failure of the Commission to initiate a standard development proceeding for the purpose of modifying design of the impactor would not unreasonably expose the petitioner or other consumers to a risk of injury presented by products covered by the standard which contain architectural glazing materials.

This notice of the Commission's denial of the above-described petition and its reasons for denial has been issued pursuant to section 10(d) of the Consumer Product Safety Act, 15 U.S.C. 2059(d).

Dated: September 26, 1977.

RICHARD E. RAPPS,
Secretary, Consumer
Product Safety Commission.

[FR Doc. 797-28822 Filed 9-30-77; 8:45 am]

Register
Proposed

MONDAY, OCTOBER 3, 1977

PART V



ENVIRONMENTAL PROTECTION AGENCY



TOXIC SUBSTANCES CONTROL

**Supplemental Notice to Proposed
Inventory Reporting Requirements; Draft
Reporting Forms**

[6560-01]

ENVIRONMENTAL PROTECTION
AGENCY

[40 CFR Part 710]

[OTS-081002A; FRL 792-7]

TOXIC SUBSTANCES CONTROL

Supplemental Notice to Proposed Inventory
Reporting Requirements; Draft
Reporting FormsAGENCY: Environmental Protection
Agency.ACTION: Supplemental notice to pro-
posed rules; draft forms.

SUMMARY: This document supplements the inventory reporting regulations re-proposed on August 2, 1977 in the FEDERAL REGISTER (42 FR 39182). Specifically, this notice provides some information that may be useful in understanding the re-proposed regulations and provides draft reporting forms for comment.

DATES: Comments on the draft reporting forms must be received on or before October 13, 1977. Comments on other issues raised in this notice must be received on or before November 2, 1977. These comments may supplement any comments previously submitted with respect to any issue raised by this notice.

ADDRESS: Comments should be addressed to the Federal Register Section, WH-557, Office of Toxic Substances, Attention: Joan Urquhart, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Comments should be filed in triplicate and bear the identifying notation OTS-081002A. All written comments filed pursuant to this notice will be available for public inspection at that office from 8:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CON-
TACT:

Mr. John B. Ritch, Jr., Director, Office of Industry Assistance, Office of Toxic Substances (TS-788), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 (202-755-0535).

SUPPLEMENTARY INFORMATION: This document supplements the regulations proposed on August 2, 1977, in the FEDERAL REGISTER (42 FR 39182) under the authority of subsection 8(a) of the Toxic Substances Control Act (90 Stat. 2003; 15 U.S.C. 2601 et seq.) hereinafter referred to as TSCA.

On March 9, 1977, EPA first published in the FEDERAL REGISTER (42 FR 13130) proposed inventory reporting regulations to govern reporting of chemical substances for inclusion on an inventory of chemical substances required by subsection 8(b) of TSCA. On April 12, 1977, EPA published a supplemental notice of proposed rulemaking in the FEDERAL REGISTER (42 FR 19298) providing additional information pertaining to the proposed inventory regulations. This notice set forth instructions for use of a Candidate

List of Chemical Substances and specified minerals which EPA proposed to include in the inventory of chemical substances. On April 18, 1977, EPA held a public meeting in Washington, D.C., to provide interested persons an opportunity to comment publicly on the proposed regulations. On April 28, 1977, EPA published a notice of availability of the Candidate List of Chemical Substances for use in reporting chemicals for inclusion on the inventory (42 FR 21639). In addition, on July 8, 1977, the Agency published a notice to amend the procedures for securing a copy of the Candidate List on computer-readable tape (42 FR 35183).

On August 2, 1977, EPA re-proposed the inventory reporting regulations to revise the March 9, 1977, proposed regulations. In order to provide interested persons an opportunity to comment publicly on the proposed regulations, EPA held a public meeting in Washington, D.C., on August 24, 1977. A transcript of the public meeting is available for public inspection in the Office of Toxic Substances at the address provided above. At this meeting, EPA distributed copies of draft reporting forms to accompany the re-proposed regulations. Copies of the revised forms are published below for public comment. In addition, EPA presented some introductory comments on the re-proposed regulations. Copies of these remarks are available from the Office of Industry Assistance at the address above.

CLARIFICATION CONCERNING IMPORTERS OF
MIXTURES AND ARTICLES CONTAINING A
CHEMICAL SUBSTANCE

Some have brought to EPA's attention ambiguity in the August 2, 1977, preamble regarding the statutory requirements on importers of mixtures and articles containing a chemical substance.

Section 710.3(a)(2) of these regulations provides that importers would be required to report those chemical substances they have imported into the United States for a commercial purpose since January 1, 1977. Section 710.3(b) of the regulations provides that any person who imported a chemical substance for a commercial purpose since January 1, 1975, may report concerning that substance. In addition, § 710.3(c) provides that during a 120-day period following the first publication of the inventory, any person who has processed or used a chemical substance (including the manufacture of a mixture or article containing that chemical substance) for a commercial purpose since January 1, 1975, may report that substance if it was not included in the inventory. The preamble to these regulations stated at page 39185 that it was EPA's intent that importers would not be required to report the chemical substances which are components of the articles they import.

EPA is proposing that importers of chemical substances be required to report all chemical substances they have imported in bulk into the United States since January 1, 1977 and that they

be permitted to report all chemical substances they have so imported since January 1, 1975. In addition, EPA is proposing that importers of chemical substances be permitted to report each chemical substance which is a component of a mixture or article which has been imported since January 1, 1975. Importers may report chemical substances comprising an imported mixture or article during either the initial reporting period or the 120-day period following publication of the initial inventory. As proposed the August 2, 1977 preamble, chemicals imported "in bulk" includes all chemical substances which are imported in cans, bottles, drums, barrels, packages, tanks, bags, and other devices which are used to contain the substances during importation.

The clarification with respect to chemical substances comprising an imported mixture or article becomes significant in light of EPA's proposed implementation of section 5(a)(1)(A) of TSCA. This section provides that no person may manufacture a new chemical substance (one not included on the inventory compiled in accordance with section 8(b)) unless that person submits premanufacture notification to EPA at least 90 days prior to manufacturing the chemical substance for a commercial purpose. The premanufacture notification requirement of section 5(a)(1)(A) applies to manufacturers and, because the term "manufacture" includes "import", importers of chemical substances. Since an importer of a mixture or article is also importing the component chemical substances in the mixture or article, such an importer would be subject to the premanufacture notification requirements with respect to all new chemical substances in the mixture or article. However, EPA intends to apply the premanufacture notification requirements of section 5(a)(1)(A) only to importers of chemical substances in bulk and importers of chemical substances in mixtures. As is discussed in greater detail below, the premanufacture notification requirements of section 5 will not be applied to the importation of an article containing a new chemical substance.

Accordingly, although importers of chemical substances in mixtures would not be required to report for compilation of the inventory, they should ensure that the chemical substances they import in mixtures are included on the inventory. After compilation of the expanded inventory on the basis of the 120-day reporting period, no person will be permitted to import a mixture containing a new chemical substance except in accordance with TSCA section 5.

The legislative history of TSCA makes clear that Congress intended the premanufacture notification requirements of section 5 to provide the Administrator with an opportunity to review and evaluate information on new chemical substances to determine if any regulatory controls would be necessary to prevent an unreasonable risk of injury to health or the environment. The section reflects Congress' recognition of the

fact that the most desirable time to determine effects of a substance and to take action if necessary, is before full commercial production begins. Congress did not intend that the purposes of this section could be circumvented by importation rather than domestic manufacture of a chemical substance. If EPA did not require importers to report any new chemical substance contained in an imported mixture, persons could manufacture new chemical substances abroad, mix them with water or other solvents, and import them into the United States as a mixture. This practice would not only significantly undermine the intent of Congress that any new chemical substance be subject to review before its introduction and use in commerce, but might also encourage domestic manufacturers to move at least part of their operations abroad. EPA does not believe that Congress intended such a result.

Moreover, Congress intended domestic manufacturers and importers to be treated with parity (H.R. Rep. No. 94-1341, 94th Cong., 2d Sess. 12-13). Premanufacture notification must be given on every new chemical substance manufactured domestically. If the importer of a mixture were not required to give premanufacture notification on any new chemical substance in a mixture, the domestic manufacturers would be put at a distinct disadvantage. An importer could enter domestic markets with a substantial savings of both time and money. The costs in terms of protection of the public health and environment would thereby be significant. Accordingly, importers of mixtures will be required to give premanufacture notification of new chemical substances.

It is the proposed Agency policy that the premanufacture notification requirements of section 5(a)(1)(A) should not be applied to the importation of chemical substances in articles. The March 9, 1977 proposed regulations would have required importers to report chemical substances contained in the articles they import. The August 2, 1977 repropoed regulations would permit but not require importers of an article to report component chemical substances for the inventory. As was discussed in the preamble to these repropoed regulations (42 FR 39185), comments from industry and trade associations argued that it would be extremely burdensome for importers to identify the chemical substances contained in the articles they import. According to estimates from the American Importers Association, the total direct costs would range from \$187 million to about \$437 million. The value of the component chemical substance(s) may be small in proportion to the value of the article itself. Accordingly, to require an importer of the article to identify its constituent chemical substances would impose a proportionately greater burden. Moreover, EPA does not believe that domestic manufacturers of articles would move their operations abroad or be put at a serious disadvantage if the importer is not required to identify constituent substances in articles. Finally,

because of its form, the health and environmental risk posed by a chemical substance imported in an article may be less than the risk posed by a chemical substance imported in bulk or in a mixture.

Accordingly, the inventory reporting requirements of section 8(a) and the premanufacture notification requirements of section 5(a)(1)(A) will not be applied to importers of chemical substances in articles. However, the Agency will exercise its authority to regulate the import of chemical substances in bulk, in mixtures, and in articles under section 6 of the Act, as necessary to protect against unreasonable risks of injury to health and the environment. This might, for example, include prohibiting, limiting or in other ways restricting the import of such chemical substances.

The Agency encourages importers of chemical substances in mixtures to ensure that the chemical substances they import are included on the inventory. If the importer chooses to report for the inventory in accordance with § 710.5(e) of the proposed regulations, he could authorize the foreign supplier of the chemical substance to report to EPA on his behalf, if both the foreign supplier and the importer sign the declarations provided on the reporting form. EPA, however, encourages importers of chemical substances in mixtures to wait to report until after the initial inventory is published next fall. Many of the imported chemical substances may be contained in the inventory, and importers could thus avoid duplicative reporting.

EPA solicits comment concerning this revision to the earlier proposals. EPA specifically welcomes comment on the distinctions we propose between importers of chemical substances in mixtures and importers of chemical substances in articles, and, in particular, on the relative burdens which would be imposed to these two sectors. The Agency has already received some comments on the broad issues and these need not be resubmitted. Conforming changes will be made to the final inventory reporting regulations.

REPORTING ON MAGNETIC TAPE

EPA is currently working with the Chemical Abstracts Service (CAS) to develop a computer file structure which can be used to allow persons to report chemical substances with CAS registry numbers on magnetic tape. These substances otherwise would be reported on either Form A or B, as discussed below. Instructions concerning how to report by magnetic tape will be included with the final regulations. EPA will probably require that there be a minimum number of substances reported on a tape so that reporting by tape would be at least as efficient as by the forms. In addition, anyone submitting a tape would have to submit at least one form with a signed certification statement and, for tapes containing confidential information, sign and submit appropriate confidentiality statements.

A WORD OF CAUTION

Several manufacturers have complained to EPA that they have spent substantial amounts of time and money compiling inventories in response to the March 9, 1977 and August 2, 1977 proposed regulations. The March 9, 1977 and August 2, 1977 proposed regulations are proposals published for public comments. The regulations will be revised in response to public comment before final promulgation. Accordingly, manufacturers and others are encouraged to keep this in mind as they prepare for compiling information for submittal to EPA.

REPORTING FORMS: FORM A, B, & C

EPA is proposing four forms for reporting under these regulations. Form A is for reporting chemical substances which are included on the Toxic Substances Control Act (TSCA) Candidate List of Chemical Substances, a list of approximately 33,000 chemical substances. This Candidate List was published by EPA last April and is available through the Office of Industry Assistance in EPA's Office of Toxic Substances. It was compiled as a tool for reporting chemical substances that are included on it. Form A provides space for the Chemical Abstracts Service (CAS) registry number and code designation which are provided for each of the chemical substances in the Candidate List. The code designation is a check number to verify that the corresponding CAS registry number was entered correctly. Code designations will not be included in the inventory. For any listed chemical, a manufacturer merely has to report these numbers on Form A rather than the chemical name or description of the chemical substance.

Everything on the Candidate List will not automatically be included on the inventory. Only those substances that are reported will be included. Further, not everything on the List is eligible for inclusion in the inventory. The Candidate List contains some mixtures such as hydrates and some chemical substances, such as those used solely as drugs and pesticides, which are excluded under these proposed regulations. In addition, the Candidate List contains naturally occurring substances which need not be reported as they will automatically be included in the inventory.

Many product trademarks are included in the Candidate List but should not be reported for the inventory. Product trademarks will not be included on the inventory because they may refer to mixtures or, in the case of trademarked chemical substances, the trademark may not always be linked with that specific substance over time. The product trademark may, however, be reported on Form D, as is discussed below. Product trademarks should be distinguished from certain generic names, such as Colour Index names, included on the Candidate List which may be reported. The purpose of the proposed Form D for trademarked products is discussed more fully below.

Form B is for reporting chemical substances which have Chemical Abstracts Service Registry Numbers but are not included in the Candidate List. Form C is for reporting either chemical substances which do not have a Chemical Abstracts Service Registry Number or whose identities are confidential.

On each of the forms there will be an opportunity for manufacturers to assert all potential confidentiality claims. If a manufacturer makes a confidentiality claim, he must sign a statement that certifies that certain statements concerning confidentiality printed on the back of the forms are true. EPA welcomes any comments concerning the provisions concerning confidential information, the clarity of the instructions, or any other aspect of the forms. These comments must be received on or before [ten days after publication of this notice] so that EPA may make appropriate modifications prior to publication of these forms.

FORM D: PRODUCT TRADEMARKS LIST

EPA has received comments from processors and users of chemical substances that they do not always know the chemical identities of the substances they purchase. Rather, they often know only the product trademarks. Accordingly, during the special 120-day report-

ing period, processors and users may have difficulty identifying whether or not the chemical substance(s) they purchase are in fact on the inventory. Processors could individually request suppliers to certify the substances that they sell are being reported. In order to ease this burden somewhat, we are proposing to provide an opportunity for manufacturers who sell products under product trademarks to certify that the chemical substances have been reported for the inventory and to report those trademarks to EPA on a separate form. A manufacturer would not be required to report his trademarks.

EPA would not require manufacturers who chose to report their trademarks to link the product trademarks with specific chemical substances. We realize that many trademarks refer to mixtures of varying compositions. Thus, linking a trademark to one specific chemical substance would in some instances be inaccurate or misleading. To require product trademarks to be defined in terms of their component chemical substances may be desirable for future requirements, but we feel it would be too burdensome for the limited purpose of compilation of the inventory.

EPA would publish a separate document along with the initial inventory

that would simply list alphabetically those product trademarks which had been reported by manufacturers. As mentioned earlier, a manufacturer would first have to certify that all the chemical substances subject to these regulations contained in the trademarked products have been reported to EPA as required by the inventory regulations. Reporting of any false information would be subject to criminal penalty under 18 USC 1001.

EPA welcomes comment on the usefulness of this approach. In particular, as proposed here, a person may report a trademarked product that is a chemical substance, a mixture, or an article containing a chemical substance. EPA is proposing to permit reporting on Form D of trademarked mixtures and articles to provide a simple mechanism for manufacturers of these mixtures and articles to assure their customers that the chemical substances contained in the mixture and articles have been reported for the inventory. EPA welcomes comment on whether such reporting should be permitted.

Dated: September 26, 1977.

DOUGLAS M. COSTLE,
Administrator.

PROPOSED RULES

53807

U.S. Environmental Protection Agency
Chemical Substance Inventory Report
Section 8(a) and (b) -- Toxic Substances Control Act
(15 U.S.C. 2607)

Instructions
Form A: TSCA Candidate List Chemical Substances

Form A may only be used to report, for the Toxic Substances Control Act (TSCA) Section 8(a) and Section 8(b) Inventory, chemical substances that are identified in the EPA publication "Toxic Substances Control Act (TSCA), PL 94-469, Candidate List of Chemical Substances," April 1977, GPO Stock Number 055-007-00001-2, or in any addendum to that list published by EPA in the FEDERAL REGISTER. Chemical substances with known Chemical Abstracts Service (CAS) Registry Numbers but which do not appear in the TSCA Candidate List of Chemical Substances should be reported using Form B. A chemical substance which has no known CAS Registry Number and/or whose identity as a commercial chemical substance is claimed confidential, must be reported on Form C.

Before completing this form, carefully read the inventory reporting regulations published in final form in the FEDERAL REGISTER and which also appear in the Code of Federal Regulations, Chapter 40, Part 710 (40 CFR 710). A Guide to the Use of the Candidate List of Chemical Substances appears in Appendix A of the inventory reporting regulations. After completing and signing this form, retain the last copy and send the remainder to:

U.S. Environmental Protection Agency
Office of Toxic Substances
P.O. Box _____
Columbus, Ohio 43210

EPA will acknowledge receipt of the forms to the addressee identified in block III of the form.

TYPE OR USE A BLACK BALL POINT PEN (Press firmly).

BLOCK I. CERTIFICATION STATEMENT AND SIGNATURE:

The certification statement must be signed by a person authorized by the company to sign official documents for the company. If a trade association reports on behalf of one or more persons, a duly authorized official of the trade association must sign the form. If an importer elects to have his foreign supplier/manufacturer complete block V of this form, the importer must, nevertheless, sign the form, and a duly authorized official of the foreign supplier/manufacturer (identified in block IV) must sign in the space below the importer's signature.

DATE: Enter the month, day, and year that the form was signed.

NAME and TITLE: Enter the name and title of the person who signed the form.

BLOCK II. CORPORATION:

Enter the complete name of the domestic corporation of which the plant site identified in block III is a part or, if that corporation is controlled by another domestic corporation, enter the complete name of the controlling corporation. If the plant site is owned by an unincorporated entity, enter the company name. A trade association should enter its complete name.

BLOCK III. COMPANY NAME AND PLANT SITE ADDRESS

Enter the company name and address of the plant where the chemical substances identified in block V are manufactured or processed. An importer should enter his company name and business address. A trade association should enter its name and headquarters address.

BLOCK IV. PRINCIPAL TECHNICAL CONTACT(S)

Enter the name, address, and telephone number (including area code) of the person(s) whom EPA may contact for clarification of information submitted on this form. An importer who elects to have his foreign supplier/manufacturer complete block V should enter the name and address of his foreign supplier/manufacturer.

BLOCK V. CANDIDATE LIST CHEMICAL SUBSTANCES:

CAUTION: The TSCA Candidate List of Chemical Substances inappropriately includes some mixtures and certain chemical substances which, as explained in the inventory reporting regulations, are excluded from the inventory. Do not report mixtures or excluded chemical substances. Furthermore, the Candidate List includes some trademarks. Do not use Candidate List entries which are trademarks to identify and report chemical substances. Trademarks will not be included on the inventory.

Up to 27 Candidate List chemical substances may be reported on this form. Manufacturers and processors should report on this form only TSCA Candidate List chemical substances which are manufactured or processed at the plant site identified in block III.

For each chemical substance entered in block V:

1. Enter in the column labeled "CAS Registry Number" the Chemical Abstracts Service (CAS) Registry Number as it appears in the Candidate List. Include hyphens.
2. Enter in the column labeled "EPA Code Designation" the code number (including hyphen) which accompanies the CAS Registry Number in the Candidate List.

PROPOSED RULES

3. As specified below, make the appropriate entry in the box under "Production Volume". Quantities should be entered in pounds and be expressed accurate to two (2) significant figures (for example, report 175,411 as 180,000; or 2,550 as 2,600)

- a) **Manufacturers and Importers:** Enter the quantity manufactured and/or imported during calendar year 1976; except that (i) if there was no manufacture or importation during 1976, enter the quantity projected for manufacture and/or for importation during calendar year 1977, or (ii) if there was no manufacture during 1976 or 1977, enter the quantity manufactured or imported during calendar year 1975, or (iii) if you did not manufacture or import the chemical substance since January 1, 1975, enter the average annual quantity distributed in commerce since that date.
- b) **Processors:** If you only processed the chemical substance since January 1, 1975, make no entry.
- c) **Trade Associations:** The estimated aggregate quantity manufactured by your member companies during calendar year 1976 may be entered.

4. Enter a check in the appropriate box(es) under the general heading "Activity" to indicate whether you manufacture, process, and/or import the chemical substance. Check as many boxes as applicable.

5. Enter a check in the box under "Site Limited" if you manufacture the chemical substance within the plant site identified in block III and do not distribute the chemical substance, or any mixture or article containing that substance, for commercial purposes outside that site.

6. Confidentiality Claims:

Enter checks in the appropriate boxes to indicate which information is claimed confidential. Trade associations are not permitted to make any confidentiality claims.

- (a) By checking the box under "Manufacture" for a particular chemical substance, you assert that the fact that you manufacture the chemical substance at the plant site identified in block III for commercial purposes is confidential.
- (b) By checking the box under "Process" for a particular chemical substance, you assert that the fact that you process the chemical substance at the plant site identified in block III for commercial purposes is confidential.
- (c) By checking the box under "Import" for a particular chemical substance, you assert that the fact that you import the chemical substance for commercial purposes is confidential.
- (d) By checking the box under "Site-Limited" for a particular chemical substance, you assert that the fact that the chemical substance is not distributed for commercial purposes outside of the manufacturing site identified in block III is confidential.
- (e) By checking the box under "Production Volume" for a particular chemical substance, you assert that the production volume of the chemical substance for the plant site identified in block III is confidential.
- (f) By checking the box under "Corporation" for a particular chemical substance, you assert that the link of this particular chemical substance to the corporation identified in block II is confidential because the corporation is not known to the public as a manufacturer, importer, or processor of this particular chemical substance for commercial purposes.
- (g) By checking the box under "Plant Site" for a particular chemical substance, you assert that the link of this chemical substance to the plant site identified in block III is confidential because it is not known to the public that the particular chemical substance is manufactured, imported, or processed for commercial purposes at this particular plant site.

OMB NO. _____

U. S. ENVIRONMENTAL PROTECTION AGENCY CHEMICAL SUBSTANCE INVENTORY REPORT (Section 8 (a) and (b) Toxic Substance Control Act 15 USC 2607)										FORM A						
<p>I. CERTIFICATION STATEMENT: I hereby certify that: (1) each chemical substance identified below has been manufactured, processed, or imported for a commercial purpose since January 1, 1975, and can be reported for the inventory (40 CFR 710); (2) all information provided on this form is complete and accurate; and (3) the confidentiality statements appearing on the back of this form are true as to all information for which I am asserting a confidentiality claim. I agree to permit access to, and the copying of, records by a duly authorized representative of the EPA Administrator to document any information here reported.</p>																
SIGNATURE _____				DATE (MO., DAY, YEAR) _____				NAME & TITLE (TYPE OR PRINT) _____								
EPA USE ONLY MID _____		II. CORPORATION														
III. PLANT SITE: NAME & ADDRESS Name _____ Address _____ City _____ State _____ Zip _____						IV. PRINCIPAL TECHNICAL CONTACT(S)										
V. TSCA CANDIDATE LIST CHEMICAL SUBSTANCES (LIST ADDITIONAL SUBSTANCES ON SEPARATE FORMS)																
NUMBER	CAS REGISTRY NUMBER	EPA CODE DESIGNATION	PRODUCTION VOLUME	ACTIVITY				CONFIDENTIALITY CLAIM								NUMBER
				MANUFACTURE	PROCESS	IMPORT	SITE LIMITED	(a) MANUFACTURE	(b) PROCESS	(c) IMPORT	(d) SITE LIMITED	(e) PRODUCTION VOLUME	(f) CORPORATION	(g) PLANT SITE	(h) EPA USE ONLY	
1																1
2																2
3																3
4																4
5																5
6																6
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26																26
27																27

DRAFT
Do Not Use

EPA NO. _____

PROPOSED RULES

CONFIDENTIALITY STATEMENTS
[For Chemical Substance Inventory Report Forms A and B]

By signing the statement appearing in block I of this form, the person signing the form certifies that the following statements are true for all information on this form that has been claimed as confidential by checking one or more of the boxes under the heading "Confidentiality Claims."

- a. By checking the box under "Manufacture" for a particular chemical substance, I assert that the fact that we manufacture the chemical substance at the plant site identified in block III for commercial purposes is confidential.
- b. By checking the box under "Process" for a particular chemical substance, I assert that the fact that we process the chemical substance at the plant site identified in block III for commercial purposes is confidential.
- c. By checking the box under "Import" for a particular chemical substance, I assert that the fact that we import the chemical substance for commercial purposes is confidential.
- d. By checking the box under "Site-Limited" for a particular chemical substance, I assert that the fact that the chemical substance is not distributed for commercial purposes outside of the manufacturing site identified in block III is confidential.
- e. By checking the box under "Production Volume" for a particular chemical substance, I assert that the production volume of the chemical substance for the plant site identified in block III is confidential.
- f. By checking the box under "Corporation" for a particular chemical substance, I assert that the link of this chemical substance to the corporation identified in block II is confidential because the corporation is not known to the public as a manufacturer, importer, or processor of this particular chemical substance for commercial purposes.
- g. By checking the box under "Plant Site" for a particular chemical substance, I assert that the link of this chemical substance to the plant site identified in block III is confidential because it is not known to the public that the particular chemical substance is manufactured, imported, or processed for commercial purposes at this particular plant site.

General Statement

For ALL of the claims I have asserted by checking any of the boxes under "Confidentiality Claims" the following statements are true:

1. We have taken reasonable measures to protect the confidentiality of the information, and we intend to continue to take such measures.
2. The information is not, and has not been, reasonably obtainable without our consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding).
3. The information is not publicly available elsewhere.
4. Disclosure of the information would cause substantial harm to our competitive position.

PROPOSED RULES

53811

U.S. ENVIRONMENTAL PROTECTION AGENCY CHEMICAL SUBSTANCE INVENTORY REPORT Section 8(a) and (b) -- Toxic Substances Control Act (15 U.S.C. 2607)

-Instructions- FORM B: Chemical Substances with CAS Registry Numbers

Form B may only be used to report, for the Toxic Substances Control Act (TSCA), Section 8(a) and Section 8(b) Inventory, chemical substances with known Chemical Abstracts Service (CAS) Registry Numbers. Chemical substances which appear in the TSCA Candidate List of Chemical Substances, should be reported using Form A. A chemical substance which has no known CAS Registry Number and/or whose identity as a commercial chemical substance is claimed confidential, must be reported on Form C.

Before completing this form, carefully read the inventory reporting regulations published in final form in the FEDERAL REGISTER and which also appear in the Code of Federal Regulations, Chapter 40, Part 710 (40 CFR 710). After completing and signing this form, retain the last copy and send the remainder to:

U.S. Environmental Protection Agency
Office of Toxic Substances
P.O. Box
Columbus, Ohio 43210

EPA will acknowledge receipt of the forms to the addressee identified in block III. TYPE, OR USE A BLACK BALL POINT PEN (Press Firmly).

BLOCK I. CERTIFICATION STATEMENT AND SIGNATURE:

The certification statement must be signed by a person authorized by the company to sign official documents for the company. If a trade association reports on behalf of one or more persons, a duly authorized official of the trade association must sign the form. If an importer elects to have his foreign supplier/manufacturer complete Block V of this form, the importer must, nevertheless, sign the form and a duly authorized official of the foreign supplier/manufacturer (identified in block IV) must sign in the space below the importer's signature.

DATE: Enter the month, day, and year that the form was signed.

NAME and TITLE: Enter the name and title of the person who signed the form.

BLOCK II. CORPORATION:

Enter the complete name of the domestic corporation of which the plant site identified in block III is a part or, if that corporation is controlled by another domestic corporation, enter the complete name of the controlling corporation. If the plant site is owned by an unincorporated entity, enter the company name. A trade association should enter its complete name.

BLOCK III. COMPANY NAME AND PLANT SITE ADDRESS:

Enter the company name and address of the plant where the chemical substances identified in block V are manufactured or processed. An importer should enter his company name and business address. A trade association should enter its name and headquarters address.

BLOCK IV. PRINCIPAL TECHNICAL CONTACT(S)

Enter the name, address, and telephone number (including area code) of the person(s) whom EPA may contact for clarification of information submitted on this form. An importer electing to have his foreign supplier/manufacturer complete block V, should enter the name and address of the foreign supplier/manufacturer.

BLOCK V. CHEMICAL SUBSTANCES WITH CAS REGISTRY NUMBERS

Up to 10 chemical substances may be reported on this form. Manufacturers and processors should report on this form only chemical substances with CAS Registry Numbers which are manufactured or processed at the plant site identified in block III.

For each chemical substance entered in Block V:

1. Enter in the column "CAS Registry Number" the Chemical Abstracts Service (CAS) Registry Number. Include hyphens.
2. Enter in the column labeled "Specific Chemical Name" the systematically derived or other specific chemical name. Enter only nonconfidential chemical names. All names reported in this column will be published in the inventory with the CAS Registry Number.
3. As specified below, make the appropriate entry in the box under "Production Volume". Quantities should be entered in pounds and be expressed accurate to two (2) significant figures (for example, report 175,411 as 180,000; or 2,550 as 2,600).
 - a) Manufacturers and Importers: Enter the quantity manufactured and/or imported during calendar year 1976; except that (i) if there was no manufacture or importation during 1976, enter the quantity projected for manufacture and/or for importation during calendar year 1977, or (ii) if there was no manufacture during 1976 or 1977, enter the quantity manufactured or imported during calendar year 1975, or (iii) if you did not manufacture or import the chemical substance since January 1, 1975, enter the average annual quantity distributed in commerce since that date.
 - b) Processors: If you only processed the chemical substance since January 1, 1975, make no entry.
 - c) Trade Associations: The estimated aggregate quantity manufactured by your member companies during calendar year 1976 may be entered.

PROPOSED RULES

4. Enter a check in the appropriate box(es) under the general heading "Activity" to indicate whether you manufacture, process, and/or import the chemical substance. Check as many boxes as applicable.
5. Enter a check in the box under "Site Limited" if you manufacture and process the chemical substance only within the plant site identified in block III and do not distribute the chemical substance, or any mixture or article containing that substance, for commercial purposes outside that site.
6. CONFIDENTIALITY CLAIMS

Enter checks in the appropriate blocks to indicate which information is claimed confidential. Trade associations are not permitted to make any confidentiality claims.

- (a) By checking the box under "Manufacture" for a particular chemical substance, you assert that the fact that you manufacture the chemical substance at the plant site identified in block III for commercial purposes is confidential.
- (b) By checking the box under "Process" for a particular chemical substance, you assert that the fact that you process the chemical substance at the plant site identified in block III for commercial purposes is confidential.
- (c) By checking the box under "Import" for a particular chemical substance, you assert that the fact that you import the chemical substance for commercial purposes is confidential.
- (d) By checking the box under "Site-Limited" for a particular chemical substance, you assert that the fact that the chemical substance is not distributed for commercial purposes outside of the manufacturing site identified in block III is confidential.
- (e) By checking the box under "Production Volume" for a particular chemical substance, you assert that the production volume of the chemical substance for the plant site identified in block III is confidential.
- (f) By checking the box under "Corporation" for a particular chemical substance, you assert that the link of this particular chemical substance to the corporation identified in block III is confidential because the corporation is not known to the public as a manufacturer, importer, or processor of this particular chemical substance for commercial purposes.
- (g) By checking the box under "Plant Site" for a particular chemical substance, you assert that the link of this chemical substance to the plant site identified in block III is confidential because it is not known to the public that the particular chemical substance is manufactured, imported, or processed, for commercial purposes at this particular plant site.

OMB NO. _____

**U.S. ENVIRONMENTAL PROTECTION AGENCY
CHEMICAL SUBSTANCE INVENTORY REPORT**
(Section 8(a) and (b) Toxic Substances Control Act 15 USC 2607)

**FORM
B**

I. CERTIFICATION STATEMENT: I hereby certify that: (1) each chemical substance identified below has been manufactured, processed, or imported for a commercial purpose since January 1, 1975, and can be reported for the inventory (40 CFR 710); (2) all information provided on this form is complete and accurate; and (3) the confidentiality statements appearing on the back of this form are true as to all information for which I am asserting a confidentiality claim. I agree to permit access to, and the copying of, records by a duly authorized representative of the EPA Administrator to document any information here reported.

SIGNATURE _____

DATE (MO., DAY, YEAR) _____

NAME & TITLE (TYPE OR PRINT) _____

(EPA USE ONLY)

MID _____

II. CORPORATION**III. PLANT SITE: NAME & ADDRESS**

Name _____

Address _____

City _____

Zip _____

State _____

IV. PRINCIPAL TECHNICAL CONTACT(S)FORM NO.
B-

NUMBER		1	2	3	4	5	6	7	8	9	10
V. CHEMICAL SUBSTANCES WITH CAS REGISTRY NUMBERS (LIST ADDITIONAL SUBSTANCES ON SEPARATE FORMS)	EPA USE ONLY										
	(g) PLANT SITE										
	(f) CORPORATION										
	(e) PRODUCTION VOLUME										
	(d) SITE LIMITED										
	(c) IMPORT										
	(b) PROCESS										
	(a) MANUFACTURE										
	SITE LIMITED										
	ACTIVITY										
IMPORT											
PROCESS											
MANUFACTURE											
PRODUCTION VOLUME											
SPECIFIC CHEMICAL NAME											
CAS REGISTRY NUMBER											
NUMBER	1	2	3	4	5	6	7	8	9	10	

EPA NO. _____

PROPOSED RULES

CONFIDENTIALITY STATEMENTS
 (For Chemical Substance Inventory Report Forms A and B)

By signing the statement appearing in block I of this form, the person signing the form certifies that the following statements are true for all information on this form that has been claimed as confidential by checking one or more of the boxes under the heading "Confidentiality Claims."

- a. By checking the box under "Manufacture" for a particular chemical substance, I assert that the fact that we manufacture the chemical substance at the plant site identified in block III for commercial purposes is confidential.
- b. By checking the box under "Process" for a particular chemical substance, I assert that the fact that we process the chemical substance at the plant site identified in block III for commercial purposes is confidential.
- c. By checking the box under "Import" for a particular chemical substance, I assert that the fact that we import the chemical substance for commercial purposes is confidential.
- d. By checking the box under "Site-Limited" for a particular chemical substance, I assert that the fact that the chemical substance is not distributed for commercial purposes outside of the manufacturing site identified in block III is confidential.
- e. By checking the box under "Production Volume" for a particular chemical substance, I assert that the production volume of the chemical substance for the plant site identified in block III is confidential.
- f. By checking the box under "Corporation" for a particular chemical substance, I assert that the link of this chemical substance to the corporation identified in block II is confidential because the corporation is not known to the public as a manufacturer, importer, or processor of this particular chemical substance for commercial purposes.
- g. By checking the box under "Plant Site" for a particular chemical substance, I assert that the link of this chemical substance to the plant site identified in block III is confidential because it is not known to the public that the particular chemical substance is manufactured, imported, or processed for commercial purposes at this particular plant site.

General Statement

For ALL of the claims I have asserted by checking any of the boxes under "Confidentiality Claims" the following statements are true:

1. We have taken reasonable measures to protect the confidentiality of the information, and we intend to continue to take such measures.
2. The information is not, and has not been, reasonably obtainable without our consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding).
3. The information is not publicly available elsewhere.
4. Disclosure of the information would cause substantial harm to our competitive position.

PROPOSED RULES

53815

U.S. Environmental Protection Agency
Chemical Substance Inventory Report
Section 8(a) and (b) -- Toxic Substances Control Act
(15 U.S.C. 2607)

-Instructions-

Form C: Chemical Substance Whose Identity is Claimed Confidential or
Whose CAS Registry Number is Unknown

Form C may only be used to report, for the Toxic Substances Control Act (TSCA), Section 8(a) and Section 8(b) Inventory, a chemical substance whose identity as commercial chemical substance is claimed confidential or whose Chemical Abstract Service (CAS) Registry Number is unknown. Chemical substances which appear in the TSCA Candidate List of Chemical Substances should be reported using Form A. Chemical substances with known CAS Registry Numbers but which do not appear in the TSCA Candidate List of Chemical Substances should be reported using Form B.

Before completing this form, carefully read the inventory reporting regulations published in final form in the FEDERAL REGISTER and which also appear in the Code of Federal Regulations, Chapter 40, Part 710 (40 CFR 710). After completing and signing this form, retain the last copy and send the remainder to:

U.S. Environmental Protection Agency
Office of Toxic Substances
P.O. Box
Columbus, Ohio 43210

EPA will acknowledge receipt of the forms to the addressee identified in block III.

TYPE, OR USE BLACK BALL POINT PEN (Press Firmly).

BLOCK I. CERTIFICATION STATEMENT AND SIGNATURE:

The certification statement should be signed by a person authorized by the company to sign official documents for the company. If a trade association reports on behalf of one or more persons, a duly authorized official of the trade association should sign the form. If an importer elects to have his foreign supplier/manufacturer complete block V of this form, the importer must, nevertheless, sign the form, and a duly authorized official of the foreign supplier/manufacturer (identified in block IV) must sign in the space below the importer's signature.

DATE: Enter the month, day, and year that the form was signed.

NAME AND TITLE: Enter the name and title of the person who signed the form.

BLOCK II. CORPORATION:

Enter the complete name of the domestic corporation of which the plant site identified in block III is a part or, if that corporation is controlled by another domestic corporation, enter the complete name of the controlling corporation. If the plant site is owned by an unincorporated entity, enter the company name. A trade association should enter its complete name.

BLOCK III. COMPANY NAME AND PLANT SITE ADDRESS:

Enter the company name and address of the plant where the chemical substances identified in block V are manufactured or processed. An importer should enter his company name and business address. A trade association should enter its name and headquarters address.

BLOCK IV. PRINCIPAL TECHNICAL CONTACT(S):

Enter the name, address, and telephone number (including area code), of the person(s) whom EPA may contact for clarification of information submitted on this form. An importer electing to have his foreign supplier/manufacturer complete block V, should enter the name and address of the foreign supplier/manufacturer.

BLOCK V. CHEMICAL SUBSTANCE WHOSE IDENTITY IS CONFIDENTIAL and/or CAS REGISTRY NUMBER IS UNKNOWN

- A. **SPECIFIC CHEMICAL NAME:** Indicate whether the chemical substance proposed for inclusion in the inventory falls within class 1 or 2, described as follows:

Class 1 chemical substances are distinct chemicals which can be represented by definite structural diagrams. For a class 1 chemical substance, propose, if possible, a systematically derived name that uniquely defines the chemical species. Also provide synonyms known to you, other than trademarks, by which the chemical substance is commonly known.

Class 2 chemical substances are those which can not be named by a class 1 description. For a class 2 chemical substance, propose a name which is as descriptive of the substance as possible. Also provide synonyms known.

- B. **ACTIVITY:** Check the appropriate box(es) to indicate whether you import, manufacture, or process the chemical substance at the plant site identified in block III. Check as many boxes as applicable.

PROPOSED RULES

- C. PRODUCTION VOLUME: As specified below, make the appropriate entry in the blank provided for "Production Volume". Quantities should be entered in pounds and be expressed accurate to two (2) significant figures (for example, report 175,411 as 180,000; or 2,550 as 2,600).
1. Manufacturers and Importers: Enter the quantity manufactured and/or imported during calendar year 1976; except that (i) if there was no manufacture or importation during 1976, enter the quantity projected for manufacture and/or for importation during calendar year 1977, or (ii) if there was no manufacture during 1976 or 1977, enter the quantity manufactured or imported during calendar year 1975, or (iii) if you did not manufacture or import the chemical substance since January 1, 1975, enter the average annual quantity distributed in commerce since that date.
 2. Processors: If you only processed the chemical substance since January 1, 1975, make no entry.
 3. Trade Associations: The estimated aggregate quantity manufactured by your member companies during calendar year 1976 may be entered.

D. CONFIDENTIALITY CLAIMS:

Enter checks in the appropriate boxes to indicate which information is claimed confidential. Trade associations are not permitted to make any confidentiality claims.

1. By checking the box under "Chemical Identity" for the substance reported, you assert that the chemical identity of the particular substance on the TSCA inventory is confidential. Enter the CAS Registry Number (including hyphens), if known. Check one or more of the justification statement boxes which refer to statements appearing on the back of this form under Item 1. These statements explain the reasons for asserting the identity to be confidential. EPA must know the reason for asserting the identity to be confidential.

In addition, provide a generic name for inclusion on the Inventory which is only as generic as necessary to protect the confidential identity of the particular chemical substance.
2. By checking the box under "Manufacture" for a particular chemical substance, you assert that the fact that you manufacture the chemical substance at the plant site identified in block III for commercial purposes is confidential.
3. By checking the box under "Process" for a particular chemical substance, you assert that the fact that you process the chemical substance at the plant site identified in block III for commercial purposes is confidential.
4. By checking the box under "Import" for a particular chemical substance, you assert that the fact that you import the chemical substance for commercial purposes is confidential.
5. By checking the box under "Site-Limited" for a particular chemical substance, you assert that the fact that the chemical substance is not distributed for commercial purposes outside of the manufacturing site identified in block III is confidential.
6. By checking the box under "Production Volume" for a particular chemical substance, you assert that the production volume of the chemical substance for the plant site identified in block III is confidential.
7. By checking the box under "Corporation" for a particular chemical substance, you assert that the link of this particular chemical substance to the corporation identified in block II is confidential because the corporation is not known to the public as a manufacturer, importer, or processor of this particular chemical substance for commercial purposes.
8. By checking the box under "Plant Site" for a particular chemical substance, you assert that the link of this chemical substance to the plant site identified in block III is confidential because it is not known to the public that the particular chemical substance is manufactured, imported, or processed for commercial purposes at this particular plant site.

E. STRUCTURAL AND SUPPLEMENTAL INFORMATION

For Class 1 chemical substances, provide a structure diagram indicating the atoms and the nature of the bonds joining the atoms. Stereochemistry, if known, and ionic charges should be shown. In addition, provide a molecular formula which is an inventory of the kinds and numbers of atoms present in the molecule without regard to how the atoms are bonded.

For Class 2 chemical substances, describe, in the form of a reaction scheme, the final reaction sequence used to produce the reported chemical substance. Such description should identify all immediate precursor substance(s) and the nature of the reaction. All reactants should be identified by their CAS Registry Numbers, if known. In addition, provide, to the extent possible, a partial structural diagram.

Supplemental instructions for the proper identification of chemical substances is provided in Appendix A of the inventory reporting regulations (40 CFR 710)

OMB NO. _____

U.S. ENVIRONMENTAL PROTECTION AGENCY CHEMICAL SUBSTANCE INVENTORY REPORT (Section 8 (a) and (b) Toxic Substance Control Act 15 USC 2607)		FORM C																								
<p>I. CERTIFICATION STATEMENT: I hereby certify that: (1) the chemical substance identified below has been manufactured, processed, or imported for a commercial purpose since January 1, 1975, and can be reported for the inventory (40 CFR 710); (2) all information provided on this form is complete and accurate; and (3) the confidentiality statements appearing on the back of this form are true as to all information for which I am asserting a confidentiality claim. I agree to permit access to, and the copying of, records by a duly authorized representative of the EPA Administrator to document any information here reported.</p>																										
SIGNATURE _____	DATE (MO., DAY, YEAR) _____	NAME & TITLE (TYPE OR PRINT) _____																								
<small>(EPA USE ONLY)</small> MID _____	II. CORPORATE NAME _____																									
III. PLANT SITE: NAME & ADDRESS Name _____ Address _____ City _____ State _____ Zip _____	IV. PRINCIPAL TECHNICAL CONTACT(S) _____																									
V. CHEMICAL SUBSTANCE WHOSE IDENTITY IS CONFIDENTIAL AND/OR CAS REGISTRY NUMBER IS UNKNOWN																										
A. SPECIFIC CHEMICAL NAME: <input type="checkbox"/> CLASS 1 <input type="checkbox"/> CLASS 2 _____ _____ _____																										
B. ACTIVITY: <input type="checkbox"/> MANUFACTURE <input type="checkbox"/> PROCESS <input type="checkbox"/> IMPORT <input type="checkbox"/> SITE LIMITED																										
C. PRODUCTION VOLUME: _____																										
D. CONFIDENTIALITY CLAIMS:																										
(1) CHEMICAL IDENTITY <input type="checkbox"/>		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">CONFIDENTIALITY CLAIMS</th> <th style="text-align: center;">✓</th> <th style="text-align: center;">EPA USE</th> </tr> <tr><td>(2) MANUFACTURE</td><td></td><td></td></tr> <tr><td>(3) PROCESS</td><td></td><td></td></tr> <tr><td>(4) IMPORT</td><td></td><td></td></tr> <tr><td>(5) SITE LIMITED</td><td></td><td></td></tr> <tr><td>(6) PRODUCTION VOLUME</td><td></td><td></td></tr> <tr><td>(7) CORPORATION</td><td></td><td></td></tr> <tr><td>(8) PLANT SITE</td><td></td><td></td></tr> </table>	CONFIDENTIALITY CLAIMS	✓	EPA USE	(2) MANUFACTURE			(3) PROCESS			(4) IMPORT			(5) SITE LIMITED			(6) PRODUCTION VOLUME			(7) CORPORATION			(8) PLANT SITE		
CONFIDENTIALITY CLAIMS	✓	EPA USE																								
(2) MANUFACTURE																										
(3) PROCESS																										
(4) IMPORT																										
(5) SITE LIMITED																										
(6) PRODUCTION VOLUME																										
(7) CORPORATION																										
(8) PLANT SITE																										
JUSTIFICATION STATEMENTS (OVER) A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/>																										
CAS REGISTRY NUMBER (IF KNOWN) _____																										
PROPOSED GENERIC NAME _____																										
E. In the space provided below provide structural & supplemental information to aid in the specific identification of the chemical substance:																										
Molecular Formula (if known) _____	<input type="checkbox"/> SEE ATTACHED SHEETS (WRITE FORM NO. ON ALL ATTACHMENTS)	# OF SHEETS _____																								

DRAFT
Do Not Use

EPA NO. _____

PROPOSED RULES

CONFIDENTIALITY STATEMENTS
[For Chemical Substance Inventory Report Form C]

By signing the statement appearing in block I of this form, the person signing the form certifies that the following statements are true for all information on this form that has been claimed as confidential by checking one or more of the boxes under the heading "Confidentiality Claims" or the box entitled "Chemical Identity."

1. By checking the box entitled "Chemical Identity," I assert that the chemical identity of this chemical substance is confidential for one or more of the following reasons (as indicated by a check by the appropriate statement or statements):
 - A. ☒ This chemical substance is known to exist; however, no one knows that this chemical substance is being manufactured, imported, or processed for commercial purposes. If our competitors knew that this chemical substance is being manufactured, imported, or processed for commercial purposes, it would show them that the chemical substance has commercial potential and might lead them into research concerning its use. No one knows that this chemical substance has commercial possibilities except us to the best of our knowledge.
 - B. ☒ This chemical substance is known to exist; however, no one knows that this chemical substance is being manufactured, imported, or processed for commercial purposes. If our competitors knew that this substance is being manufactured, imported, or processed for commercial purposes, they would immediately conclude that we had reported it. The fact that we manufacture, import, or process this chemical substance for commercial purposes is confidential.
 - C. ☒ This chemical substance is not known to exist. If our competitors knew that this chemical substance does exist and that it is manufactured, imported, or processed for commercial purposes, it would show them that the chemical substance has commercial potential and might lead them into research concerning its use. No one knows that this chemical substance has commercial possibilities except us to the best of our knowledge.
2. By checking the box under "Manufacture" for a particular chemical substance, I assert that the fact that we manufacture the chemical substance at the plant site identified in block III for commercial purposes is confidential.
3. By checking the box under "Process" for a particular chemical substance, I assert that the fact that we process the chemical substance at the plant site identified in block III for commercial purposes is confidential.
4. By checking the box under "Import" for a particular chemical substance, I assert that the fact that we import the chemical substance for commercial purposes is confidential.
5. By checking the box under "Site-Limited" for a particular chemical substance, I assert that the fact that the chemical substance is not distributed for commercial purposes outside of the manufacturing site identified in block III is confidential.
6. By checking the box under "Production Volume" for a particular chemical substance, I assert that the production volume of the chemical substance for the plant site identified in block III is confidential.
7. By checking the box under "Corporation" for a particular chemical substance, I assert that the link of this chemical substance to the corporation identified in block III is confidential because the corporation is not known to the public as a manufacturer, importer, or processor of this particular chemical substance for commercial purposes.
8. By checking box under "Plant Site" for a particular chemical substance, I assert that the link of this chemical substance to the plant site identified in block III is confidential because it is not known to the public that the particular chemical substance is manufactured, imported, or processed for commercial purposes at this particular plant site.

General Statement

For ALL of the claims I have asserted by checking any of the boxes under "Confidentiality Claims" or the box entitled "Chemical Identity" the following statements are true:

1. We have taken reasonable measures to protect the confidentiality of the information, and we intend to continue to take such measures.
2. The information is not, and has not been, reasonably obtainable without our consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding).
3. The information is not publicly available elsewhere.
4. Disclosure of the information would cause substantial harm to our competitive position.

U.S. Environmental Protection Agency
Voluntary Product Trademark Report
(In conjunction with the Toxic Substances Control Act
Chemical Substance Inventory Reporting)

Instructions
Form D: Product Trademarks

Form D may be used by manufacturers and importers of trademarked products to report their product trademarks. If such products contain chemical substances which are permitted to be reported for the Toxic Substances Control Act (TSCA), Section 8(a) and Section 8(b) Chemical Substance Inventory by the inventory reporting regulations (40 CFR 710), the manufacturer or importer must certify that those chemical substances have been reported. Form D may not be used to report chemical substances. Chemical substances must be reported using Chemical Substance Inventory Report Forms A, B, or C, whichever is applicable.

From reports voluntarily submitted using Form D, EPA will compile and publish a Product Trademark List in conjunction with the TSCA Chemical Substance Inventory. The list will serve primarily two purposes. First, it will allow manufacturers and importers of trademarked products to assure customers that all reportable chemical substances contained in their products appear in the TSCA Chemical Substance Inventory. Second, processors and users, who may add chemical substances to the inventory during a special 120-day reporting period following its publication, will be able to consult both the Inventory and the Product Trademark List to determine if the chemical substances they process or use have been reported.

Before completing this form, carefully read the inventory reporting regulations as published final in the FEDERAL REGISTER and which also appear in the Code of Federal Regulations, Chapter 40, Part 710 (40 CFR 710). After completing and signing this form, retain the last copy and send the remainder to:

U.S. Environmental Protection Agency
Office of Toxic Substances
P.O. Box
Columbus, Ohio 43210

EPA will acknowledge receipt of the form to the addressee identified in block II of the form.

TYPE OR USE A BLACK BALL POINT PEN (Press Firmly).

BLOCK I. CERTIFICATION STATEMENT AND SIGNATURE:

The certification statement must be signed by a person authorized by the company to sign official documents for the company. By signing the statement, you certify for each product trademark listed in block IV that all chemical substances permitted to be reported under the Toxic Substances Control Act Section 8(b) inventory reporting regulation (40 CFR 710) which comprise that trademarked product have been reported by someone for inclusion on the Chemical Substance Inventory.

BLOCK II. CORPORATE NAME AND ADDRESS:

Enter the complete name and address of the domestic corporation which manufactures or imports the trademarked products. For unincorporated entities, enter the company name and address.

BLOCK III. PRINCIPAL TECHNICAL CONTACT(S):

Enter the name, address, and telephone number (including area code) of the person(s) whom EPA may contact for clarification of information submitted on this form.

BLOCK IV. PRODUCT TRADEMARKS:

List the trademarks for products which you manufacture or import. Trademarks which cover a line of products may be listed in aggregated form if the certification statement is true for all products within that line.

PROPOSED RULES

UMB NO. _____

U.S. ENVIRONMENTAL PROTECTION AGENCY VOLUNTARY PRODUCT TRADEMARK REPORT (In conjunction with the Toxic Substances Control Act Chemical Substance Inventory reporting)	FORM D
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I. CERTIFICATION STATEMENT: I hereby certify that each trademark listed below identifies a product which I manufacture or import and that all component chemical substances that are permitted to be reported for the inventory (40 CFR 710) have been reported. I agree to permit access to, and the copying of, records, by a duly authorized representative of the EPA Administrator to document any information here reported.

(EPA USE ONLY)
MID _____

SIGNATURE _____

DATE (MO., DAY, YEAR) _____

NAME & TITLE (TYPE OR PRINT) _____

II. CORPORATION: NAME & ADDRESS

Name _____

Address _____

City _____

Zip _____

State _____

III. PRINCIPAL TECHNICAL CONTACT(S)

FORM NO.
D-1

IV. PRODUCT TRADEMARKS

No.	PRODUCT TRADEMARKS	No.	No.	PRODUCT TRADEMARKS	No.
1		1	29		29
2		2	30		30
3		3	31		31
4		4	32		32
5		5	33		33
6		6	34		34
7		7	35		35
8		8	36		36
9		9	37		37
10		10	38		38
11		11	39		39
12		12	40		40
13		13	41		41
14		14	42		42
15		15	43		43
16		16	44		44
17		17	45		45
18		18	46		46
19		19	47		47
20		20	48		48
21		21	49		49
22		22	50		50
23		23	51		51
24		24	52		52
25		25	53		53
26		26	54		54
27		27	55		55
28		28	56		56

EPA NO. _____

[FR Doc.77-28738 Filed 9-30-77;8:45 am]

Registered
Federal

MONDAY, OCTOBER 3, 1977

PART VI



DEPARTMENT OF
HEALTH,
EDUCATION,
AND WELFARE

Office of Education



VOCATIONAL
EDUCATION, STATE
PROGRAMS AND
COMMISSIONER'S
DISCRETIONARY
PROGRAMS

[4110-02]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION,
DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARESTATE ADMINISTERED PROGRAMS AND
COMMISSIONER'S DISCRETIONARY
PROGRAMS

AGENCY: Office of Education, HEW.

ACTION: Final regulations.

SUMMARY: These regulations implement the Vocational Education Act of 1963 as completely revised by the Education Amendments of 1976. The regulations cover both the State administered programs and the Commissioner's discretionary programs. Generally, the regulations are designed to assist States to improve planning in the use of all resources for vocational education and to overcome sex discrimination in vocational education. Also, the regulations permit consolidation of programs to provide greater flexibility to the States in conducting vocational education programs.

EFFECTIVE DATE: Pursuant to section 431(d) of the General Education Provisions Act, as amended (20 U.S.C. 1232 (d)), these regulations have been transmitted to the Congress concurrently with their publication in the FEDERAL REGISTER. That section provides that regulations subject thereto shall become effective on the forty-fifth day following the date of such transmission, subject to the provisions therein concerning Congressional action and adjournment.

FOR FURTHER INFORMATION CONTACT:

Ms. Juliette Lester, Chair of the Regulations Task Force, Bureau of Occupational and Adult Education, Room 5002, Regional Office Building No. 3, 7th and D Streets SW., Washington, D.C. 20202 (202-245-3465).

SUPPLEMENTARY INFORMATION:

RULEMAKING HISTORY

The Office of Education has been vitally concerned about the need for intensive public participation in the development of these regulations because of the substantial impact Pub. L. 94-482 will have on the administration and operation of vocational education programs throughout the nation. The major steps and activities involved in carrying out these public participation objectives are set forth below.

After the Act was passed the Commissioner published in the FEDERAL REGISTER (41 FR 49742) a Notice of Intent to Issue Regulations (NOI) on November 10, 1976. This NOI contained a comprehensive overview of the Act and set forth fifteen substantive issues needing clarification in the regulations. After publication of the

NOI, a 65-day comment period followed, during which public comment was solicited. Between November 22, 1976 and January 15, 1977, public meetings were held in each State to discuss the issues raised in the NOI and any other relevant issues. Approximately 6,000 people attended these 66 meetings. Also, during this 65-day comment period, over 600 letters and telephone calls were received in response to the NOI from a wide variety of commenters. At the end of this initial comment period, all comments and suggestions received were analyzed and the proposed regulations were drafted to reflect this public participation.

The Notice of Proposed Rulemaking (NPRM) was published in the FEDERAL REGISTER at 42 FR 18542 on April 7, 1977. In addition to the proposed regulations, the NPRM also contained in the preamble an overview of the regulations. A 30-day comment period followed publication of the NPRM. A press release from the Office of Education was sent to approximately 450 local organizations and newspapers announcing the publication of the NPRM and the schedule for the public meetings. Public meetings were conducted in the ten HEW regional cities from April 20 through April 29. Letters of invitation were sent to approximately 10,000 individuals and organizations. Educators, administrators, consumers of the program, and members of the general public attended these meetings and presented formal statements. In addition, almost 700 letters were received containing comments, criticisms, recommendations, and questions on nearly every section of the proposed regulations. These comments came from diverse groups and individuals, including State and local educators and administrators, women's groups, and a large number of vocational students and teachers. This massive amount of public input was analyzed during the development of the final regulations. A summary of the comments received and the responses to these comments are set forth in this preamble.

Although the final regulations have been significantly affected by intense public involvement, the Office of Education sees the development of regulations implementing the Vocational Education Act as being an evolutionary process which will continue over a period of several years. The actual impact and consequences of the statutory provisions and problems which States and local educational agencies may have in implementing these provisions are not known at the present time. Therefore, the public is encouraged to continue to submit their views on these regulations, and the Office of Education will amend and revise the regulations in the future as need and experience dictate.

OVERVIEW OF THE REGULATIONS

PART 104—STATE ADMINISTERED PROGRAMS

STATE ADMINISTRATION

Any State which desires to receive funds under the Act must designate a State board to be the sole State agency

responsible for the administration of programs under the Act (§ 104.31). This board may delegate any of its responsibilities (§ 104.33) except those listed in § 104.32 (a) to (d). The State must also assign full-time personnel to assist in reducing sex discrimination and sex stereotyping in vocational education programs and activities throughout the State (§ 104.72). Each State is to expend \$50,000 from the basic grant for this purpose (§ 104.74).

Each State must establish a State advisory council representing at least 20 designated interests (§ 104.92). There must be an appropriate representation by sex, race, ethnicity, and geography on the council to effectively reflect the diverse interests and needs of the general public (§ 104.92(b)). The functions and responsibilities of the State advisory council are expanded to include identifying manpower as well as vocational needs, commenting on the reports of the State Manpower Services Council, and providing technical assistance to local advisory councils (§ 104.93). The expenditure of funds made available to the council is to be determined solely by the council for carrying out its functions (§ 104.96).

Each local educational agency (LEA) and postsecondary institution receiving Vocational Education Act (VEA) funds through the State board must establish a local advisory council composed of members of the general public to provide advice on job needs and relevancy of courses to those needs (§ 104.111).

Each State must also establish a State Occupational Information Coordinating Committee (SOICC) (§ 104.122). This SOICC must implement an occupational information system in the State which will meet the common needs for the planning for, and operation of, programs of the State board and of the administering agencies under the Comprehensive Employment and Training Act (§ 104.123).

PLANNING

To be eligible to receive funds, a State must maintain on file with the Commissioner a general application containing twelve assurances covering a broad range of administrative and fiscal matters (§ 104.141). This application includes the assurance that the State will give priority, in distributing funds, to (1) economically depressed areas and areas with high unemployment rates which are unable to meet the vocational needs of these areas without Federal assistance, and to (2) programs which are new to the areas to be served and which meet new and emerging manpower needs. The State must also use as the two most important factors in distributing funds to local educational agencies (1) the relative financial ability to provide needed services and (2) the relative concentration of low-income populations within such agencies. In the case of other eligible recipients, the State must use, as the two most important factors, the recipient's relative financial ability to provide needed services and the relative concentration of students it serves who impose

higher than average costs (e.g. handicapped, disadvantaged, those with limited English-speaking ability).

The State must submit to the Commissioner a five-year State plan by July 1, 1977 for fiscal years 1978 through 1982 and a second five-year State plan on July 1, 1982 for fiscal years 1983 through 1987 (§ 104.161).

In formulating the plan, the State board is to involve actively a representative of the State agencies for secondary education, postsecondary vocational education, community and junior colleges, and institutions of higher education. The State board must also involve representatives from local school boards, vocational teachers, local school administrators, the State Manpower Services Council, the State agency for Comprehensive Postsecondary Education Planning, and the State advisory council (§ 104.162). The State board and these designated representatives must meet at least four times during the planning year (§ 104.163). If these representatives are not able to agree on the contents of the State plan, the State board is responsible for reaching a final decision (§ 104.164). In this event, the State board must include in the plan the recommendations rejected by the State board and the reason for each rejection. Any dissatisfied agency may appeal the State board's decision to the Commissioner (§ 104.281). The Commissioner will then decide whether that State plan is supported by substantial evidence, as shown in the State plan, and will best carry out the purposes of the Act (§ 104.288).

The five-year State plan must contain the procedures for carrying out certain assurances of the general application (§ 104.182) and the specific program provisions described in § 104.183 through § 104.188. These provisions include an assessment of employment opportunities in the State (§ 104.183), the goals the State will seek to meet employment needs (§ 104.184), the planned funding to meet employment needs (§ 104.185), the intended uses of funds to meet specific program needs (§ 104.186), the policies adopted by the State to eradicate sex discrimination (§ 104.187), and a description of the mechanism established for coordination between manpower training programs and vocational education programs (§ 104.188).

The planning process also includes the submission of an annual program plan (§ 104.202) and annual accountability report (§ 104.203). The procedural requirements for developing the five-year plan are also applicable to the annual plan and accountability report but the number of required planning meetings is reduced to three (§ 104.205).

Even though the annual plan is essentially an updating of the five-year plan, it must contain the proposed distribution of funds among eligible recipients. The additional requirements of the annual plan are described in §§ 104.221 and 104.222. The content of the annual accountability report is described in § 104.241.

FISCAL REQUIREMENTS

Federal VEA funds must be used to share only in expenditures which are made in accordance with the assurances of the general application, five-year State plan and annual program plan (§ 104.301). The Federal share of expenditures under the five-year State plan and annual program plan may not exceed 50 percent of the cost of carrying out the programs (§ 104.302).

The fiscal requirements for allowable expenditures for the national priority programs are described in § 104.304. At least 10 percent of the State's allotment under section 102(a) of the Act is to be used to pay up to 50 percent of the costs of special programs, services, and activities for the handicapped (§ 104.312); at least 20 percent of the State's allotment under section 102(a) of the Act is to be used to pay up to 50 percent of the costs of special programs, services, and activities for the disadvantaged, for persons with limited English-speaking ability and for stipends for students with acute economic needs which cannot be met under other programs (§ 104.313); and at least 15 percent to pay up to 50 percent of the cost of postsecondary and adult programs, services, and activities (§ 104.314). The percentage of the 20 percent set-aside which goes to persons with limited English-speaking ability is equivalent to the proportion such persons age 15-24 are to the entire population of the State in the same age bracket (§ 104.313).

The Federal share for State administration of the five-year State plan and annual program plan, from funds allotted to the State under section 102(a) of the Act, is up to 50 percent of the cost of administration of the plans (§ 104.306). The Federal share in fiscal year 1978 is up to 80 percent and in fiscal year 1979 the Federal share is up to 60 percent. The Federal share for the cost of local supervision and administration from funds available under section 102 (a) must be computed in accordance with either of the two methods set forth in § 104.307.

STATE EVALUATION

Each State must evaluate the effectiveness of each funded program within a five-year period (§ 104.402). These evaluations must be in terms of the planning and operational processes, results of student achievement, results of student employment success and results of additional services that the State provides under the Act of special populations (§ 104.402). Programs which purport to impart entry level job skills are to be evaluated according to the extent to which program completers and leavers find employment in related occupations and are considered well-trained by their employers (§ 104.404).

BASIC GRANT

Each State shall use its basic grant, which is 80 percent of the funds allotted under section 102(a) of the Act, for the purposes described in § 104.502. These purposes include vocational education

programs, work-study programs, cooperative vocational programs, energy education programs, construction of area vocational education facilities, support of full-time personnel to eliminate sex bias, stipends for students who have acute economic needs which cannot be met by other programs, placement services for students whose needs cannot be met by other programs, industrial arts programs, support services for women who enter programs designed to prepare individuals for programs traditionally limited to men, day care services for children of persons enrolled in vocational schools, construction and operation of residential vocational schools, provision of vocational training through arrangements with private vocational training institutions and State and local administration. The scope and specific program requirements of each purpose are set forth in §§ 104.511 through 104.634. This extensive list of programs, activities, and services has been consolidated into a single basic grant to allow the States to determine their own priorities for funding.

PROGRAM IMPROVEMENT AND SUPPORTIVE SERVICES

The State must use 20 percent of its allotment under section 102(a) of the Act for Subpart 3—program improvement and supportive services (§ 104.701). Under program improvement and supportive services, funds may be used for research programs (§ 104.705), exemplary and innovative programs (§ 104.706), and curriculum development programs (§ 104.708). These programs are to be operated by research coordinating units (RCU) or are to be conducted by contracts awarded by the RCU (§ 104.703). The State must develop a comprehensive plan of program improvement which includes the intended uses of funds and a description of the State's priorities. The pertinent contract requirements for research programs and for curriculum programs are described in § 104.704. Exemplary and innovative programs must give priority to reducing sex bias and sex stereotyping in vocational education (§ 104.706).

Not less than 20 percent of the funds reserved for program improvement and supportive services are to be used for guidance and counseling services which may include initiation and improvement of counseling services, counseling leading to greater understanding of educational and vocational options, provision of placement and follow-up services for vocational students and individuals preparing for occupations requiring a baccalaureate or higher degree, training to help overcome sex-biased counseling, counseling in correctional institutions, counseling for persons of limited English-speaking ability, resource centers for out-of-school individuals, and leadership for guidance and counseling personnel (§ 104.763).

The State may also use part of the funds reserved for program improvement and supportive services for vocational education personnel training (§ 104.771). Training may be provided to

persons serving or preparing to serve in vocational education programs, including teachers, administrators, supervisors, and vocational guidance and counseling personnel (§ 104.773).

Funds under program improvement and supportive services may also be used for grants to overcome sex bias and sex stereotyping (§ 104.791). The purpose of these grants is to support activities which show promise of overcoming sex bias and sex stereotyping in vocational education and may be in the areas of research, curriculum development, or guidance and counseling (§ 104.793).

The State may also use part of the funds reserved for program improvement and support services for State and local administration (§§ 104.306 and 104.307).

SPECIAL PROGRAMS FOR THE DISADVANTAGED

Each State must use the funds allotted to it from the authorization under section 102(b) of the Act for special programs of vocational education for disadvantaged persons in areas of high youth unemployment or school dropouts (§ 104.802). The criteria of need and eligibility for disadvantaged persons are described in § 104.804. These projects for the disadvantaged may receive up to 100 percent Federal support (§ 104.802).

CONSUMER AND HOME MAKING

The State must also use the funds allotted to it from the authorization under section 102(c) of the Act for programs of consumer and homemaking education (§ 104.901). The Federal share is 50 percent except in economically depressed areas where the Federal share is 90 percent (§ 104.906). One-third of the separate authorization is for economically depressed areas. Grants may be used for (1) educational programs that encourage males and females to prepare for combining homemaking and wage earning roles, develop curriculum materials which encourage elimination of sex stereotyping, give greater consideration to needs in economically depressed areas, encourage outreach programs, prepare persons for the homemaker role, emphasize consumer, nutrition, and parenthood education (§ 104.904) and (2) for ancillary services (§ 104.905).

An appendix containing definitions is added at the end of Part 105.

PART 105—COMMISSIONER'S DISCRETIONARY PROGRAMS

PROGRAM IMPROVEMENT

Under this subpart the Commissioner is authorized to support projects of national significance for improvement of vocational education primarily through contracts and, in some cases, through grants (§ 105.101). The Commissioner may fund up to 100 percent of the cost of the following types of activities if they are found to be of national significance: (a) Research projects; (b) exemplary and innovative projects; (c) vocational curriculum development projects; (d) vocational guidance and counseling programs; (e) vocational education personnel training programs; and

(f) grants to assist in overcoming sex bias and sex stereotyping (§ 105.104).

A grant applicant must be able to demonstrate a reasonable probability that the project will result in improved teaching techniques or curriculum materials that will be used in a substantial number of classrooms or other learning situations within five years after the termination date. Exemplary and innovative projects must provide for appropriate participation by nonprofit private school children (§ 105.109). Activities funded shall include contracts to convert job preparation curriculums prepared for use by the armed services to curriculums usable by the schools (§ 105.103).

CONTRACT PROGRAM FOR INDIAN TRIBES

The Commissioner will enter into contracts with Indian tribal organizations at the request of Indian tribes to plan, conduct, and administer programs which are consistent with the Act and regulations (§ 105.201). The sections of the Indian Self-Determination and Education Assistance Act of 1975 which are applicable are set forth in § 105.202. The criteria for the selection of award recipients are in § 105.211. Additional factors for declining to enter into a contract are listed in § 105.212.

TRAINING AND DEVELOPMENT PROGRAMS FOR VOCATIONAL EDUCATION PROGRAMS FOR VOCATIONAL EDUCATION PERSONNEL

The Commissioner is to provide opportunities for full-time advanced study of vocational education, opportunities for certified teachers in other fields to become vocational education teachers, and opportunities for persons in industry with skills in fields for which there is a need for vocational educators to be so trained (§§ 105.302 and 105.431). Persons having two years of experience in vocational education or in comparable types of situations and who have a baccalaureate degree may receive awards for use at the graduate level, in approved institutions of higher education (§ 105.304). Persons certified to teach in any field who have applicable vocational skills or persons employed in industry with similar skills may receive awards for use in approved teacher-training institutions (§ 105.311). The criteria for approving applications for leadership development awards are in § 105.309. The criteria for approving applications for certification fellowships are in § 105.443.

EMERGENCY ASSISTANCE FOR REMODELING AND RENOVATING OF VOCATIONAL EDUCATION FACILITIES

The Commissioner will make grants to urban and rural local educational agencies which are unable to provide vocational programs to meet existing manpower needs because of the obsolescence of their facilities or equipment (§ 105.501). Grants may be used to support 75 percent of the cost of modernizing such facilities (100 percent in cases of extreme need) and the cost of changes necessary to comply with the Architectural Barriers Act (§ 105.506). The criteria for approving applications are set forth in § 105.505.

BILINGUAL VOCATIONAL TRAINING

The Commissioner will make grants to support bilingual vocational training programs (§ 105.601), bilingual vocational instructor training programs (§ 105.611), and programs for the development of bilingual instructional materials (§ 105.621). The criteria to be used in reviewing applications for these three programs are set forth in §§ 105.606, 105.616, and 105.626 respectively.

TECHNICAL AMENDMENTS

On June 3, 1977, Pub. L. 95-40 was signed into law by the President. This Act makes several technical and miscellaneous amendments to provisions relating to vocational education contained in Title II of the Education Amendments of 1976, Pub. L. 94-482. As a result of the enactment of these Technical Amendments, certain revisions have been made to these final regulations.

In accordance with section 431(b) (2) (A) of the General Education Provisions Act it is the practice of the Office of Education to provide an opportunity for interested parties to take part in its rule-making process. However, a separate rulemaking procedure on these revisions to the regulations is unnecessary because these revisions to the regulations conform to the language of the Technical Amendments.

Furthermore, a separate rulemaking procedure on the revisions to the regulations would be contrary to the public interest because it would prolong the effective date of the regulations and cause undue delay in the implementation of the vocational education State-administered program. Since the five year State plan and annual program plan are to be effective as of October 1, 1977, it is necessary to have the publication of final regulations at this time.

The amendments contained in Pub. L. 95-40, other than those merely typographical, are briefly summarized in the following paragraphs. (The numbered paragraphs do not correspond to the sequential order of the Technical Amendments.) In each instance in which a conforming change is made in the regulation, a citation to the regulation is given.

1. Use of Federal funds for State administration is deleted from the authorization of section 102(d) and is made an allowable use of funds under the authorization of section 102(a). This amendment has the effect of removing the \$25 million limitation on use of Federal funds for State administration which was contained in section 102(d). Instead, the State now has the flexibility to use whatever amount of Federal funds is necessary for prudent State administration of vocational programs. Federal funds used for State administration, however, must be expended in accordance with the State plan and the matching requirements of section 111(a) (2). In addition, Federal funds used for State administration must be prorated between the amount available for basic grants in subpart 2 (80 percent) and program improvement and support services in sub-

part 3 (20 percent). Although this division will prevent administrative expenses from being disproportionately charged against a single program activity, it is not required that administrative personnel be distributed in an 80/20 ratio between subpart 2 and subpart 3 activities. Rather, the State may distribute its administrative personnel in whatever proportion best meets its needs. Section 104.306 of the NPRM is rewritten to conform to these changes in the Act.

(2) Pub. L. 95-40 permits local administrative and supervisory costs to be paid out of the State's allotment under section 102(a). Federal funds used for local administration must also be prorated between subpart 2 (80 percent) and subpart 3 (20 percent).

Section 111(a)(1)(C) sets forth two methods for computing the Federal share. In the first case, the percentage of Federal funds used by an eligible recipient for the costs of supervision and administration of vocational education programs may be no greater than the percentage of Federal funds used to support the total vocational education program carried out by the eligible recipient. For example, the total cost of the vocational education program of the eligible recipient is \$100,000 and the Federal contribution to this eligible recipient is \$25,000 or 25 percent of the total. If local administrative costs are \$10,000, then up to 25 percent of this amount or \$2,500 may be charged against the Federal funds.

The second method allows up to 50 percent of the costs of supervision and administration to be charged to Federal funds provided that State funds match Federal funds dollar for dollar. State funds used to match Federal funds must be specifically made available for the purpose of local administration. For example, if the total cost of local administration is \$10,000, then up to \$5,000 may be charged to Federal funds as long as the State contributes the same amount from a specific State appropriation.

Both methods for computing local administrative costs are contained in a new regulation, § 104.307.

(3) Section 110 of the Act is amended to allow for the cost of all programs, services, and activities listed in subpart 2 (section 120) and subpart 3 (section 130) to be applied against the minimum percentages for the national priority programs (i.e. handicapped, disadvantaged, and postsecondary). Previously, the cost of vocational education programs as defined in section 195 was the only allowable use of funds to meet the section 110 minimum percentage requirement. In addition, the amendments remove an ambiguity in the Act by applying the three minimum percentages for the national priority programs directly against the section 102(a) authorization. Sections 104.303 and 104.304 are revised to conform to these statutory changes.

(4) Section 120 of the Act is amended to authorize the use of Federal funds

for vocational training through private vocational training institutions. Arrangements may be made with these institutions if they can make a significant contribution to attaining the objectives of the State plan, and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public institutions. The definition of "private vocational training institutions" is added to section 195 of the Act. Sections 104.502 and 104.514 are amended accordingly. The new definition is added to Appendix A to these regulations.

(5) Sections 132 and 133 of the Act are amended to clarify that the State's research coordinating unit shall be responsible for coordinating exemplary and innovative programs (section 132) and curriculum programs (section 133) as well as research programs in section 131.

(6) Substantive changes are made to the section 103(a)(1)(B) responsibilities for the Bureau of Indian Affairs (BIA). First, the amendments require BIA, beginning in fiscal year 1979, to expend an amount which is equal to the amount available to the Commissioner for the Indian contract program for vocational education programs, services, and activities. BIA must expend not less than the amount expended during the prior year on these programs. In addition, the Commissioner of Education and the Commissioner of Indian Affairs will jointly prepare a plan for the expenditure of the funds and for the evaluation of programs assisted under this part. The Commissioner (OE) will assume responsibility for the administration of the program with the assistance and consultation of the Bureau of Indian Affairs. BIA is no longer deemed a State board. Accordingly, the reference in § 105.214 in the NPRM to BIA being deemed a State board is deleted.

(7) The Technical Amendments amend the eligibility provision for Indian tribes to participate in the contract program. Section 103(a)(1)(B) extends the authority of the Commissioner to contract for vocational programs with any Indian tribe which is eligible to contract for administration of programs under the Indian Self-Determination Act, rather than just those tribes which have actually contracted under that Act. The corresponding change is made to § 105.205.

(8) The Amendments include the Northern Mariana Islands as a State for the purpose of the Vocational Education Act and also include the Northern Mariana Islands with the other outlying areas for determination of allotment ratios under the Act.

(9) Section 105(d)(4)(A) is amended to require State advisory councils on vocational education to assess the extent to which special education programs as well as vocational education and manpower programs are meeting the needs of the State. Section 104.93(f) of the regulations is amended to reflect this additional responsibility in relation to special education.

(10) Section 105(f)(1) is amended to require that appropriations for the State advisory councils are to be allocated under the allotment method contained in section 103(a)(2).

(11) The Technical Amendments correct an error in section 111(a)(1)(C) which contains the authority for 100 percent Federal funding. Former references to sections 122(f), 133(b) and 140 are deleted and references to sections 122(f), 132(b) and 140(b)(2) are inserted. The result is that cooperative vocational education programs, exemplary programs, and special programs for the disadvantaged, when they include students from nonprofit private schools, may be supported with up to 100 percent Federal funding. Section 104.305 of the regulations conforms to these amendments.

(12) Section 111(a) of the Act is amended by adding a new subparagraph (3) to clarify the Commissioner's authority to pay, from the amount available to each State under the section 102(d) allotment, an amount up to 100 percent of the cost of planning and evaluation activities authorized under section 102(d).

(13) The section 111(a)(2)(B) provision which allows the Federal share of State administration in fiscal year 1978 to be in excess of 80 percent if the State has over matched the Federal funds by ten to one is amended. The determination year is changed from fiscal year 1977 to the latest fiscal year for which reliable data are available. Section 104.306(c) of the regulations conforms to this amendment.

(14) The noncommingling requirement in the cooperative vocational education program (section 122(g)) is amended in order to clarify that the noncommingling requirement applies only to those funds used for programs involving students in nonprofit private schools. Subsection (e) of the new § 104.533 prohibits the commingling of Federal, State, and local funds for programs which include students enrolled in nonprofit private schools.

(15) The clerical error in the language of section 134(a) concerning the use of funds for the eight guidance and counseling activities is corrected. Whereas the provision previously appeared to require section 134 funds to be used for all eight activities, the correction makes it clear that funding shall be for one or more of these activities.

(16) Section 161(a)(3)(A) is amended by delaying for one year the date the national vocational education data reporting and accounting system is to be in full operation.

(17) The implementation date for the occupational information data system in section 161(b)(1) is delayed for one year to September 30, 1978.

(18) Two changes are made to the section 162 authority governing the National Advisory Council on Vocational Education. First, this section restores the authority to the Council to accept gifts if the acceptance of such gifts will better enable the Council to carry out its func-

tions. Secondly, the section makes clear that the Council is to review special education programs as well as vocational education and manpower programs.

(19) The statutory definition of "handicapped" is amended to conform the definition to that used in the Education of the Handicapped Act. Persons with specific learning disabilities are now included under the definition. Also, the term "orthopedically impaired" is substituted for the term "crippled." Corresponding changes are made to the definition of "handicapped" in Appendix A of the regulations.

(20) Pub. L. 95-40 also amends section 107(b)(4) of the Comprehensive Employment and Training Act of 1973 (CETA). The amendment requires the National Commission on Manpower Policy and the State Manpower Services Councils to review the extent to which special education programs as well as vocational education and manpower programs represent a coordinated approach to the employment and training and vocational education needs of the nation.

(21) Finally, Pub. L. 95-40 makes certain amendments to section 523 of the Education Amendments of 1976. The amendments delay for one year the final submission of the reports by the National Institute of Education and makes the report on consumer and homemaking education submittable on the same date as the report on the regular vocational education program. Also, beginning in fiscal year 1978 the full sum of the reservation of funds in this section will be made available to the National Institute of Education for its studies.

CRITICAL ISSUES

Many comments were submitted on many sections of the proposed regulations. These comments and the responses are set forth following the text of the regulations. Some of the comments raised critical policy issues with respect to the interpretation and implementation of the Act. The critical issues are briefly summarized in the following paragraphs.

1. FUNDING FORMULA FOR THE LIMITED ENGLISH-SPEAKING ABILITY POPULATION

Section 110(b)(2) of the Act requires each State to compute the amount of funds for persons with limited English-speaking ability from the "funds used by a State pursuant to section 110(b)(1)." Section 110(b)(1) directs the State to use at least 20 percent of the allotment under section 102(a) for the cost of vocational education for disadvantaged persons, for persons of limited English-speaking ability and for stipends.

The interpretation contained in the NPRM was for the State to apply the percentage of persons of limited English-speaking ability to the amount of the set-aside. For example, if the limited English-speaking population of the State is 10 percent, then 10 percent of the 20-percent set-aside (2 percent of the section 102(a) allotment) would be earmarked for persons of limited English-speaking ability.

Another legally supportable interpretation which would result in a significant change in the method by which Federal funds are distributed by the States to disadvantaged persons was given serious consideration by the Commissioner during the comment period. Under this interpretation, the State would apply the percentage of persons of limited English-speaking ability to the entire allotment under section 102(a), but such amount could not exceed the total amount reserved for the section 110(b)(1) set-aside. In accordance with this interpretation, if the limited English-speaking population of the State is 10 percent, then 10 percent of the entire allotment (rather than 10 percent of the set-aside) would be earmarked for the limited English-speaking population.

Since the Act is susceptible of two interpretations, the Commissioner has decided to retain the interpretation contained in the NPRM, set forth in § 104.313(c). The Commissioner believes that the adoption of the latter interpretation would place drastic limitations on funds available for other disadvantaged students' needs and would substantially undermine many on-going vocational education programs for disadvantaged persons.

2. EXCESS COSTS OF VOCATIONAL EDUCATION PROGRAMS FOR HANDICAPPED AND DISADVANTAGED PERSONS

Section 110(a) of the Act requires each State to expend at least 10 percent of its allotment under section 102(a) for the "cost of vocational education for handicapped persons." Section 110(b) requires at least 20 percent of the allotment under section 102(a) to be expended for the "cost of vocational education for disadvantaged persons * * *."

The statutory language "cost of vocational education," in sections 110(a) and 110(b) was interpreted in the NPRM to mean "full cost." It was stated in the preamble at 42 FR 18549 that, as long as the State complies with the matching requirements in section 110 of the Act, the State could use the combined Federal, State, and local funds to pay the entire cost of the vocational education program for handicapped and disadvantaged persons. In other words, Federal funds for vocational education programs for handicapped and disadvantaged persons were not limited solely to the cost of special services needed by the handicapped and disadvantaged.

Many commenters believed that the interpretation contained in the NPRM was a serious misreading of Congressional intent. According to these commenters, unless the Federal and matching State and local funds were used to pay the excess costs of necessary program modifications, supplementary services or special programs for handicapped and disadvantaged persons, funds available to accommodate these special populations would be greatly reduced. These commenters suggested that the statutory language "cost of vocational education" must be read in the context of the definitions of "handicapped" and disadvan-

tagged" which emphasize the special services which are needed to enable handicapped and disadvantaged persons to take full advantage of the vocational education program.

The Commissioner agrees that paragraphs (a) and (b) of section 110 are susceptible of the interpretation proffered by these commenters. Since a reduction in services for handicapped and disadvantaged persons might result by charging the full cost of the vocational education program against the required minimum, the comments in support of charging the excess costs are accepted. Accordingly, § 104.303 of the regulations is amended to require the Federal and matching State and local funds to be used to pay only the "excess costs" (that is, the costs of special education and related services above the costs of the regular students) of the programs for the handicapped and disadvantaged. For example, if the cost of providing vocational training to the non-handicapped student is \$600, and the cost of providing vocational training to the handicapped student in the same class is \$750, the State may use the combined Federal, State, and local funds to pay only the incremental cost of \$150 for the vocational education program for the handicapped student.

Alternatively, if the handicapped or disadvantaged student is placed in a separate program, Federal, State and local funds may only be used to pay those costs which exceed the average per pupil cost for vocational education for non-handicapped or non-disadvantaged students.

3. PROVIDING DATA BY "PROGRAMS" RATHER THAN "COURSES"

Section 104.184(a) of the NPRM contained a requirement that the five-year State plan describe the State's goals in terms of the "programs (courses) and other training opportunities to be offered to meet employment needs." "Program" is defined as a "planned sequence of courses, services, or activities designed to meet an occupational objective." Since the Act uses the term "courses," there has been considerable debate during the development of the regulations over which term, "program," or "course" carries the proper interpretation in line with Congressional intent.

The major difficulty in changing from "programs" to "courses" in the final regulations is that it would create an undue reporting burden on the States and would greatly increase paperwork. Another problem is that "course" has no standard definition throughout the States, while "program" is specifically defined by the Office of Education in Handbook VI, entitled "Standard Terminology for Curriculum and Instruction in Local and State School Systems" (1970), which currently provides for reporting on at least 160 designated programs. Educators are familiar with OE's list of "instructional programs." The definitions are used by all States. Data by "courses" would be very difficult to obtain since all reporting presently is in

terms of "programs." Definitions of "courses" vary from State to State and within a particular State. Since "course" is not a standardized term, aggregation of data would be virtually impossible.

In view of these difficulties, reporting data by programs rather than by courses should provide sufficient detail in the five-year State plan to meet the intent of the law adequately. Accordingly, the text of the final regulation has not been changed.

4. DEFINITIONS OF "ADULT PROGRAM" AND "POSTSECONDARY PROGRAM"

A great many comments were received in relation to the definitions of "adult program" and "postsecondary program" as they appeared in the Appendix to Part 104 in the Notice of Proposed Rulemaking. These comments objected to the definitions on three grounds:

(1) The definitions are not contained in the Act;

(2) They would jeopardize the student's eligibility for a Basic Educational Opportunity Grant (BEOG) or a College Work Study (CWS) grant; and

(3) They would "eliminate" post-high school programs in vocational and technical schools.

While it is true that the definitions, labeled as such, are not in the new Act, the language of the two definitions as set forth in Appendix A is taken directly from section 110(c) of the Act, which requires the State to set aside 15 percent of its basic grant for persons in two categories of programs. While these two categories of persons are not labeled in section 110(c) as "adult" or "postsecondary," they are so labeled in the legislative history of the Act (H. Rept. No. 94-1085, pp. 48-49) which indicates strong Congressional intent that the definitions be used to avoid the "enormous confusion" which has existed in reporting adult and postsecondary programs and that "a majority of the States urged Congress to clarify these definitions."

Further study has indicated clearly that the definitions of "adult program" and "postsecondary program" will not affect a student's eligibility for a BEOG or CWS grant. Eligibility for grants under those programs is dependent on the Act and regulations for the particular program; they are not affected by definitions in the new Vocational Education Act or the regulations under the Act.

The definitions are intended, as the legislative history makes clear, for reporting (in the annual program plan and accountability report) and not for allocation purposes. Section 110(c) of the new Act, which uses the definitions, requires a set-aside of 15 percent for both categories; it does not require any specific apportionment between the two categories. Since a State may apportion its 15 percent set-aside between adult and postsecondary programs according to its decision as set forth in its State plan, the definitions as used in the Appendix to Part 104 will not "eliminate" any program at the post-high school level in a vocational and technical school. Nor should the definition in

any way encourage States to favor post-high school level programs in community or junior colleges (which lead to an associate or other degree) over those in vocational and technical schools (which lead to a certificate). While some commenters suggested that post-high school programs leading to a certificate should be added to the definition of "postsecondary program," the legislative history is clear (H. Rept. No. 94-1085, bottom of page 48 and top of page 49), that such programs are to be considered for reporting purposes as adult programs.

5. EQUAL ACCESS FOR MINORITIES AND WOMEN

With respect to the policies and procedures that assure equal access for minorities and women, the question was posed whether the Office of Education will require more than a simple "we will not discriminate" statement in the five-year State plan.

Section 107(b)(4)(A) of the Act and § 104.187(a) of the regulations require the State to set forth a detailed description of the policies and procedures to assure equal access to programs by women and men. This description must include the specific actions taken to overcome sex discrimination and the incentives adopted to encourage enrollment of both women and men in nontraditional courses. A perfunctory statement in the five-year State plan that "we will not discriminate" will not satisfy this requirement in the Act and regulations.

The issue of equal access for minorities is not specifically addressed in the Vocational Education Act. Federal financial assistance under the Act, however, is subject to the regulations in 45 CFR Part 80 which effectuate the provisions of Title VI of the Civil Rights Act of 1964. These civil rights requirements are referenced in 45 CFR 100b.252 of the General Education Provisions Regulations and have a direct application to the vocational education regulations. In this connection, it is expected that the Office of Civil Rights will review the five-year plan and annual program plan for civil rights compliance, particularly in the program areas serving women, minorities, and the handicapped.

EXPLANATION OF THE DOCUMENT

SELF-CONTAINED DOCUMENT

The regulations are designed as a self-contained document, making it unnecessary to refer constantly to the Act. Accordingly, the regulations repeat all essential requirements of the Act so that the States, local educational agencies, and other eligible recipients under the State administered program (45 CFR Part 104) and all eligible applicants under the Commissioner's discretionary programs (45 CFR Part 105) may, in general, rely on the regulations without reference to the Act.

Reference to the General Education Provisions Act (GEPA) and the General Education Provisions Regulations (GEPR) will, however, be necessary. In particular, the civil rights requirements referenced in the General Education

Provisions Regulations (45 CFR 100a.262 and 45 CFR 100b.262) have a direct application to Part 104 and Part 105. In addition, Federal financial assistance under the Vocational Education Act is subject to the regulations in 45 CFR Part 80 (which effectuate the provisions of Title VI of the Civil Rights Act of 1964), the regulation in 45 CFR Part 84 (which effectuate Section 504 of the Rehabilitation Act of 1973), and to the regulations in 45 CFR Part 86 (which effectuate the provisions of Title IX). Title IX provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. To repeat these civil rights requirements, as well as the requirements of the General Education Provisions Regulations, in Part 104 and Part 105 would defeat the express purpose of the General Education Provisions Regulations, which is to publish in one place regulations which affect the various education programs generally.

TERMINOLOGY

To make reading and understanding of the regulations easier, the new Vocational Education Act is referred to simply as "the Act." Sections of the Act are referred to in the text, for example, as "section 101 of the Act." A section of the regulations is referred to, for example, as "§ 104.101" with use of the section symbol (§). The phrase "of these regulations" is not repeated. Thus a reference to "section 101" should be recognized as a reference to section 101 of the Act; a reference to "§ 104.101" is a reference to § 104.101 of the regulations.

To make the regulations more readable (and at the same time shorter) Acts or regulations which are frequently mentioned are referred to by their acronyms, "CETA," "GEPA," "GEPR," for example. The Department of Health, Education, and Welfare is "HEW." If an acronym is used, it is defined in the definitions or the text.

CITATION TO LEGAL AUTHORITY

As required by section 431(a) of the General Education Provisions Act (20 U.S.C. 1232(a)), a citation to the statutory or other legal authority for each provision of the regulations has been placed in parentheses on the line immediately following the text of the regulation. Each citation applies to the text of the regulations between that citation and the next preceding citation.

Citation is to the Vocational Education Act of 1963, as amended by Title II of the Education Amendments of 1976 (Pub. L. 94-482), as further amended by Pub. L. 95-40, unless otherwise noted. Citation to another act refers to the other act by name or other designation. For example, "section 434 of GEPA" is a citation to section 434 of the General Education Provisions Act. Citation to the United States Code, for example "(20 U.S.C. 2301)," generally follows a citation to a section of the Act.

It is important to note that a citation standing alone means that the regulation closely follows the section of the Act cited, with only minor editorial simplification. Where language is added in the regulation in order to interpret the Act, the citation reads "(Interprets Sec. ____)." Where the regulation implements the Act, such as when criteria are set forth, the citation reads "(Implements Sec. ____)."

INTERNAL FEDERAL MATTERS NOT REGULATED

The requirements of the Act relating to matters of internal Federal administration are not set forth in the regulations. For example, these regulations do not repeat the statutory requirement that the President appoint members of the National Advisory Council on Vocational Education (section 162 of the Act). Likewise, the regulations do not address the following: (a) The establishment and duties of the Bureau of Occupational and Adult Education (section 160 of the Act); (b) the requirement that the Commissioner make findings and suggestions in relation to State plans (section 112(a)(1) of the Act); (c) the requirement that the Bureau of Occupational and Adult Education (BOAE) review and analyze the programs in at least 10 States a year (section 112(a)(2) of the Act); (d) the requirement that the HEW Audit Agency conduct fiscal audits within the same States in which BOAE conducts its reviews (section 112(a)(2) of the Act); (e) the requirement that the Commissioner file an annual report with Congress (section 112(c) of the Act); and (f) the duties of the National Occupational Information Coordinating Committee (section 161(b) of the Act).

To conclude, in general terms, matters of internal Federal administration appearing in the Act under "Federal and State Evaluation" (section 112 of the Act) and "Federal Administration" (sections 160-162 of the Act) are not set forth in the regulations.

The Act provides for appeal to the United States Court of Appeals in several instances, including an appeal from the Commissioner's findings of noncompliance with the State plan (section 109(d)). Since an appeal to the courts is a legal matter to be handled by attorneys, the procedures for appeal set forth in the Act are not repeated in the regulations.

The Commissioner's delegations of authority are not set forth in the regulations. Hence, when the regulations say "the Commissioner" will perform a function, the Commissioner's authority to perform this function may have been delegated to another official in the Office of Education.

Appendix A, containing definitions of terms, is set forth following the text of the regulations for Parts 104 and 105. Appendix B contains questions and answers raised by interested persons with respect to the implementation of the

Act. These questions raised important policy considerations and have legal significance. Following Appendix B, the comments, suggestions, and recommendations received during the rulemaking period and the responses to these comments are set forth as supplementary information.

NOTE.—The Office of Education has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: August 18, 1977.

JOHN ELLIS,
Acting Commissioner
of Education.

Approved: September 26, 1977.

JOSEPH A. CALIFANO, JR.,
Secretary of Health, Education,
and Welfare.

(Catalog of Federal Domestic Assistance Program Nos. 13.493 Vocational Education—Basic Grants; 13.494 Consumer and Homemaking; 13.495 Program Improvement and Supportive Services; 13.498 Program Improvement Projects; 13.499 Special Needs; 13.500 State Advisory Councils; 13.503 Training and Development Awards for Vocational Education Personnel—Leadership Development Awards; 13.558 Bilingual Vocational Training; 13.586 Bilingual Vocational Instructor Training; 13.587 Bilingual Vocational Instructional Materials, Methods, and Techniques; 13.588 Vocational Education Contract Program for Indian Tribes and Indian Organizations; (to be assigned), Training and Development Awards for Vocational Education Personnel—Vocational Education Certification Fellowships.)

PART 100a—DIRECT PROJECT GRANT AND CONTRACT PROGRAMS

1. In part 100a, § 100a.10(a)(11) and § 100a.10(a)(26) (relating to programs under the Education Professions Development Act) are amended to read as follows:

§ 100a.10 Scope.

(a) * * *

(11) Programs of contracts with Indian tribal organizations under section 103(A)(1)(B), programs of national significance under sections 171 and 172 of subpart 2 of Part B; programs of bilingual vocational training under sections 181-189B of subpart 3 of Part B; and programs of emergency assistance for remodeling and renovation of vocational education facilities under sections 191-194 of Subpart 4 of Part B, of Title I of the Vocational Education Act of 1963, as amended by section 202 of Pub. L. 94-482 (20 U.S.C. 2303(a)(1)(B), 2401, 2402; 2411-2421; 2411-2444).

(26) Teacher Corps and Teacher Training Programs under Title V of the Higher Education Act of 1965, as amended by sections 151-153 of Pub. L. 94-482 (20 U.S.C. 1102-1104, 1119-1119a-1).

PART 100b—STATE ADMINISTERED PROGRAMS

2. In Part 100b, § 100b.10(f) is amended to read as follows:

§ 100b.10 Scope.

(f) State vocational education programs under sections 101-150 of Part A of Title I of the Vocational Education Act of 1963, as amended (20 U.S.C. 2301-2380).

PART 100c—INDIRECT COSTS UNDER CERTAIN PROGRAMS

3. In Part 100c, § 100c.1(f) is amended to read as follows:

§ 100c.1 Scope.

(f) State vocational education programs under sections 101-150 of Part A of Title I of the Vocational Education Act of 1963, as amended (20 U.S.C. 2301-2380).

4. New Parts 104 and 105 are added to read as follows:

PART 104—STATE VOCATIONAL EDUCATION PROGRAMS

Subpart 1—State Administration

Sec.
104.1 Scope.
104.2 Purpose.
104.3 Applicability of General Education Provisions Regulations.
104.4 Cross reference to definitions.
104.5 Requirements under Part B of the Education of the Handicapped Act.

STATE BOARD

104.31 Establishment of State board.
104.32 Responsibilities of the State board.
104.33 Delegation of functions.
104.34 State administration and leadership.

FULL-TIME PERSONNEL AND FUNCTIONS TO ELIMINATE SEX DISCRIMINATION AND SEX STEREOTYPING

104.71 Scope.
104.72 Selection of full-time personnel to eliminate sex discrimination and sex stereotyping.
104.73 Definitions.
104.74 Funds for full-time personnel and functions.
104.75 Functions of full-time personnel.
104.76 Studies to carry out functions.

STATE ADVISORY COUNCIL

104.91 Establishment and certification.
104.92 Membership.
104.93 Functions and responsibilities.
104.94 Meetings and rules.
104.95 Staff and services.
104.96 Fiscal control.
104.97 Annual evaluation report.

LOCAL ADVISORY COUNCILS

104.111 Establishment of local advisory councils.
104.112 Duties of local advisory councils.
104.116 Vocational education information data system.

NATIONAL AND STATE OCCUPATIONAL INFORMATION COORDINATING COMMITTEES

104.121 Establishment of National Occupational Information Coordinating Committee.

- Sec.
104.122 Requirement to establish State occupational information coordinating committees.
104.123 Duties of the State occupational informational coordinating committee.

GENERAL APPLICATION

- 104.141 Requirement for filing a general application.

DEVELOPMENT OF FIVE-YEAR STATE PLAN

- 104.161 Submission of five-year State plan.
104.162 Representation required in the development of the five-year State plan.
104.163 Meetings of participating representatives.
104.164 State board adoption of the five-year State plan.
104.165 Public hearings on the five-year State plan.
104.171 Certification of plans.
104.181 Content of five-year State plan.
104.182 Procedures to assure compliance with the general application.
104.183 Assessment of employment opportunities.
104.184 Goals to meet employment needs.
104.185 Funding to meet employment needs.
104.186 Funding to meet program (purpose) needs.
104.187 Policies for eradicating sex discrimination.
104.188 Coordination between manpower training programs and vocational education programs.

DEVELOPMENT OF ANNUAL PROGRAM PLAN AND ACCOUNTABILITY REPORT

- 104.202 Due date of annual program plan.
104.203 Due date of annual accountability report.
104.204 Representation required in the development of the annual program plan and accountability report.
104.205 Meetings of participating representatives.
104.206 State board adoption of the annual program plan and accountability report.
104.207 Public hearing on the annual program plan and accountability report.
104.221 Content of annual program plan for fiscal year 1978.
104.222 Content of annual program plans for the fiscal years following 1978.
104.241 Content of the accountability report.

APPROVAL OF FIVE-YEAR STATE PLAN AND ANNUAL PROGRAM PLAN AND ACCOUNTABILITY REPORT

- 104.261 Conditions for approval of five-year State plan.
104.262 Conditions for approval of annual program plan and accountability report.
104.263 Notice of approval or disapproval.

WITHHOLDING OF APPROVAL OF PLAN

- 104.271 Disapproval of plan.

HEARINGS BEFORE THE COMMISSIONER ON AGENCY OR COUNCIL CHALLENGES TO THE FIVE-YEAR STATE PLAN OR THE ANNUAL PROGRAM PLAN

- 104.281 Opportunity for a hearing.
104.282 Appeal to the Commissioner.
104.283 Hearing.
104.284 Prehearing.
104.285 Right to counsel, witnesses, cross examination.
104.286 Evidence and standard of evidence.

- Sec.
104.287 Determinations to be made by the hearing officer.
104.288 Commissioner's decision.
104.289 Appeals by State board or agency to the court of appeals.

SUSPENSION AND TERMINATION OF PAYMENTS FOR NONCOMPLIANCE

- 104.291 Suspension and termination of payments for noncompliance.

APPEAL TO THE COURTS

- 104.292 Appeal by State board on withholding of approval of State plan.
104.293 Appeal by eligible recipients to the court of appeals.

FISCAL REQUIREMENTS
FEDERAL SHARE

- 104.301 Application of Federal requirements.
104.302 Federal share of expenditures—annual program plan.
104.303 Federal share of expenditures—national priority programs.
104.304 Allowable expenditures for vocational education for national priority programs.
104.305 Federal share of expenditures—100 percent payments.
104.306 Federal share of expenditures—State administration.
104.307 Federal share of expenditures—local administration.

MINIMUM PERCENTAGES

- 104.311 Percentage requirements with respect to State distribution of Federal funds.
104.312 Minimum percentage for the handicapped.
104.313 Minimum percentage for the disadvantaged.
104.314 Minimum percentage for postsecondary and adult.
104.315 Expenditures for programs in secondary schools.

MAINTENANCE OF EFFORT

- 104.321 Maintenance of fiscal effort at the State level.
104.322 Withholding of payments.
104.323 Five percent rule.
104.324 Unusual circumstance rule.
104.325 Maintenance of fiscal effort at the local level.
104.326 Withholding of payments.
104.327 Exceptions.
104.328 Maintenance of fiscal effort by postsecondary educational institutions.
104.329 Withholding of payments.
104.330 Exceptions.

STATE EVALUATION

- 104.401 Purpose.
104.402 Evaluation by State board.
104.403 Use of results of evaluation.
104.404 Special data on completers and leavers.
104.405 Assurance of compatible data.

Subpart 2—Basic Grants

GENERAL PURPOSES

- 104.501 Authorization of grants.
104.502 Use of funds under the basic grant.

VOCATIONAL EDUCATION PROGRAMS

- 104.511 Use of funds.
104.512 Vocational instruction.
104.513 Activities of vocational education student organizations.
104.514 Vocational instruction under contract.
104.515 Apprenticeship programs.

WORK STUDY PROGRAMS

- Sec.
104.521 Use of funds.
104.522 Policy and procedure for work-study programs.
104.523 Requirements of work-study programs.

COOPERATIVE VOCATIONAL EDUCATION PROGRAMS

- 104.531 Use of funds.
104.532 Assurances in five-year State plan.
104.533 Students in nonprofit private schools.

ENERGY EDUCATION

- 104.541 Use of funds.
104.542 Applications by postsecondary educational institutions.
104.543 Solar energy.

CONSTRUCTION OF AREA VOCATIONAL EDUCATION SCHOOL FACILITIES

- 104.551 Use of funds.
104.552 Types of facilities.
104.553 Construction requirements.

PROVISION OF STIPENDS

- 104.571 Use of funds.
104.572 Restrictions on payment of stipends.
104.573 Application for payment of stipends by eligible recipients.
104.574 Rates for stipends.

PLACEMENT SERVICES FOR STUDENTS WHO HAVE SUCCESSFULLY COMPLETED VOCATIONAL EDUCATION PROGRAMS

- 104.581 Use of funds.
104.582 Restrictions on placement services.
104.583 Application for funds by eligible recipients.

INDUSTRIAL ARTS

- 104.591 Use of funds.
104.592 Industrial arts programs.

SUPPORT SERVICES FOR WOMEN

- 104.601 Use of funds.
104.602 Types of support services.
104.603 Support to increase number of women instructors.

DAY CARE SERVICES FOR CHILDREN OF STUDENTS

- 104.611 Use of funds.
104.612 Day care services.

VOCATIONAL EDUCATION PROGRAMS FOR DISPLACED HOMEMAKERS AND OTHER SPECIAL GROUPS

- 104.621 Use of funds.
104.622 Scope of programs.

CONSTRUCTION AND OPERATION OF RESIDENTIAL VOCATIONAL SCHOOLS

- 104.631 Use of funds.
104.632 Residential vocational schools.
104.633 Special considerations for residential vocational schools.
104.634 Construction requirements.

Subpart 3—Program Improvement and Supportive Services

- 104.701 Authorization of grants.

PROGRAM IMPROVEMENT

- 104.702 Purpose.
104.703 Research coordinating unit.
104.704 Contract requirements.
104.705 Use of funds for research programs.
104.706 Use of funds for exemplary and innovative programs.
104.707 Disposition of exemplary and innovative programs.
104.708 Use of funds for curriculum development programs.

VOCATIONAL GUIDANCE AND COUNSELING

- Sec.
 104.761 Purpose.
 104.762 Conformity with five-year State plan.
 104.763 Kinds of programs, services, and activities.
 104.764 Special emphasis.

VOCATIONAL EDUCATION PERSONNEL TRAINING

- 104.771 Purpose.
 104.772 Conformity with five-year State plan.
 104.773 Eligible participants.
 104.774 Types of training.
 104.775 Grants or contracts.
 104.776 Stipends to trainees.

GRANTS TO OVERCOME SEX BIAS AND SEX STEREOTYPING

- 104.791 Purpose.
 104.792 Conformity with five-year State plan.
 104.793 Types of projects.

Subpart 4—Special Programs for the Disadvantaged

- 104.801 Grants to States for special programs for the disadvantaged.
 104.802 Use of funds.
 104.803 Students in nonprofit private schools.
 104.804 Criteria of need and eligibility.

Subpart 5—Consumer and Homemaking Education

- 104.901 Grants to States for consumer and homemaking education.
 104.902 Use of funds.
 104.903 Programs in consumer and homemaking education.
 104.904 Purpose of educational programs in consumer and homemaking education.
 104.905 Ancillary services.
 104.906 Federal share.

AUTHORITY: Secs. 101-195 of Title II of Pub. L. 94-482 as further amended by Pub. L. 95-40 (20 U.S.C. 2301 to 2461), unless otherwise noted.

Subpart 1—State Administration

§ 104.1 Scope.

Part 104 contains regulations interpreting or implementing Part A of Title I of the Vocational Education Act of 1963, as amended by Title II of the Education Amendments of 1976, Pub. L. 94-482 (referred to as "the Act").

(Secs. 101 through 150, 195; 20 U.S.C. 2301.)

§ 104.2 Purpose.

(a) The purpose of Part A of the Act, as stated in section 101 of the Act, the "Declaration of Purpose," is to assist States in improving planning in the use of all resources available to the States for vocational education and manpower training by involving a wide range of agencies and individuals concerned with education and training within the State in the development of the vocational education plans.

It is also the purpose of this part to authorize Federal grants to States to assist them—

- (1) To extend, improve, and, where necessary, maintain existing programs of vocational education,
- (2) To develop new programs of vocational education,

(3) To develop and carry out such programs of vocational education within each State so as to overcome sex discrimination and sex stereotyping in vocational education programs (including programs of homemaking), and thereby furnish equal educational opportunities in vocational education to persons of both sexes, and

(4) To provide part-time employment for youths who need the earnings from such employment to continue their vocational training on a full-time basis, so that persons of all ages in all communities of the State, those in high school, those who have completed or discontinued their formal education and are preparing to enter the labor market, those who have already entered the labor market, but need to upgrade their skills or learn new ones, those with special educational handicaps, and those in postsecondary schools, will have ready access to vocational training or retraining which is of high quality, which is realistic in the light of actual or anticipated opportunities for gainful employment, and which is suited to their needs, interests, and ability to benefit from such training.

(b) The purpose of these regulations is to assist the States, local educational agencies, postsecondary institutions, and other institutions capable of carrying out vocational education programs, to administer the federally assisted State programs of vocational education under the Act.

(Sec. 101; 20 U.S.C. 2301.)

§ 104.3 Applicability of General Education Provisions Regulations.

Provisions in Parts 100, 100b, and 100c of the General Education Provisions Regulations (45 CFR Parts 100, 100b, and 100c), entitled "General Provisions for Office of Education Programs," are applicable to programs under the Act, except for the following sections:

(a) Section 100b.16—Implementation of application procedures;

(b) Section 100b.18—General application;

(c) Section 100b.18—Annual program plan;

(d) Section 100b.19—State plan requirements;

(e) Section 100b.35(b)—Effective dates of application, plans, and amendments;

(f) Section 100b.92(b)—Matching and cost sharing;

(g) Section 100b.93—Valuation of in-kind contributions from third parties; and

(h) Section 100b.94—Supporting records for in-kind contributions from third parties.

(20 U.S.C. 2301 et seq.)

§ 104.4 Cross reference to definitions.

Definitions necessary for the understanding of Parts 104 and 105 are set forth in Part C of Title I of the Act (section 195 of the Act) and as Appendix A at the end of Part 105 or these regulations. Some additional definitions necessary for the understanding of Part 105 appear in Part 105.

(Sec. 195; 20 U.S.C. 2461.)

§ 104.5 Requirements under Part B of the Education of the Handicapped Act.

(a) Regulations under Part B of the Education of the Handicapped Act are located in 45 CFR Part 121a.

(20 U.S.C. 1417(b).)

(b) Section 612(6) of the Education of the Handicapped Act requires that the State educational agency be responsible for ensuring that all educational programs for handicapped children within the State, including all of those programs administered by any other State or local agency, are under the general supervision of persons responsible for educational programs for handicapped children in the State educational agency.

(20 U.S.C. 1412(6).)

(c) Section 613(a)(2) of the Education of the Handicapped Act requires each State to insure that funds provided under this part to assist in the education of handicapped children are used only in a manner consistent with a goal of providing a free appropriate public education for all handicapped children.

(d) Paragraph (c) of this section does not limit the requirements of this Part or the statutes under which this part is authorized.

(20 U.S.C. 1413(a)(2).)

(e) Section 612(6) of the Education of the Handicapped Act requires that any activity to assist the education of handicapped children under this Part shall meet the educational standards of the State educational agency.

(20 U.S.C. 1412(6).)

(f) Section 616(a)(2)(B) of the Education of the Handicapped Act provides that the Commissioner may withhold payments available under this Part for assisting the education of handicapped children:

(1) For failure to comply substantially with any provision of section 612 or 613 of the Education of the Handicapped Act; or

(2) In the administration of the annual program plan under Part B of the Education of the Handicapped Act for failure to comply with:

(i) Any provision of Part B of the Education of the Handicapped Act; or

(ii) Any requirements in the application of a local educational agency or intermediate educational unit approved by the State educational agency under that annual program plan.

(g) The Commissioner will use the notice and hearing procedures in section 616 of the Education of the Handicapped Act before withholding payments under this section.

(20 U.S.C. 1416.)

STATE BOARD

§ 104.31 Establishment of State board.

(a) A State desiring to participate in programs under the Act shall, consistent with State law, designate or establish a

State board or agency which shall be the sole State agency responsible for the administration, or for the supervision of administration, of programs under the Act.

(b) The State board is solely accountable to the Commissioner for the State's expenditure of Federal vocational education funds.

(Sec. 104(a)(1); 20 U.S.C. 2304; Sen. Rept. No. 94-882, p. 72.)

§ 104.32 Responsibilities of the State board.

The responsibilities of the State board include (but are not limited to):

(a) Coordination of the development of policy with respect to programs under the Act (as set forth in §§ 104.162, 104.163, 104.204, and 104.205);

(b) Coordination of the development of the five-year State plan (as set forth in § 104.181), the annual program plan (as set forth in §§ 104.221 and 104.222), and the accountability report (as set forth in § 104.241);

(c) The submission to the Commissioner of the five-year State plan, the annual program plan, and the accountability report; and

(d) Consultation with the State advisory council on vocational education and with other State agencies, councils, and individuals (as set forth in § 104.162).

(Sec. 104(a)(1) (A), (B), and (C); 20 U.S.C. 2304.)

(e) Cooperation with the Administrator of the National Center for Educational Statistics in the development and submission of information required for a national vocational education data reporting and accounting system.

(Sec. 161(a); 20 U.S.C. 2391.)

§ 104.33 Delegation of functions.

The State board may delegate any of its responsibilities (except those responsibilities set forth in § 104.32), in whole or in part, to one or more appropriate agencies.

(Sec. 104(a)(1); 20 U.S.C. 2304.)

§ 104.34 State administration and leadership.

The State board shall provide for a State staff sufficiently qualified by education and experience and in sufficient numbers to enable the State board to carry out its functions under the State plan. The State board staff shall include a full-time State director.

(Implements sec. 104(a)(1) and sec. 106(a)(1).)

FULL-TIME PERSONNEL AND FUNCTIONS TO ELIMINATE SEX DISCRIMINATION AND SEX STEREOTYPING

§ 104.71 Scope.

Sections 104.72 through 104.76 apply only to the fifty States and the District of Columbia. (These sections do not apply to the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, Northern Mariana Islands,

or the Trust Territory of the Pacific Islands.)

(Sec. 104(b)(3); 20 U.S.C. 2304.)

§ 104.72 Selection of full-time personnel to eliminate sex discrimination and sex stereotyping.

(a) A State desiring to participate in the programs authorized by the Act shall select personnel to work full time to assist the State board in fulfilling the purposes of the Act concerned with:

(1) Furnishing equal educational opportunities in vocational education programs to persons of both sexes; and

(2) Eliminating sex discrimination and sex stereotyping from all vocational education programs.

(Secs. 101(3), 104(b)(1); 20 U.S.C. 2301, 2304.)

(b) In selecting the full-time professional personnel, the State shall match the qualifications of the applicants with the responsibilities of the job.

(Implements Sec. 104(b)(1); 20 U.S.C. 2304.)

§ 104.73 Definitions.

The following definitions apply for the purposes of §§ 104.72 through 104.76 and throughout the Act and regulations.

(a) "Sex bias" means behaviors resulting from the assumption that one sex is superior to the other.

(b) "Sex stereotyping" means attributing behaviors, abilities, interests, values, and roles to a person or group of persons on the basis of their sex.

(c) "Sex discrimination" means any action which limits or denies a person or a group of persons opportunities, privileges, roles, or rewards on the basis of their sex.

(Implements Sec. 104(b); 20 U.S.C. 2304.)

§ 104.74 Funds for full-time personnel and functions.

(a) Each State shall expend not less than \$50,000 in each fiscal year from funds available under basic grants (section 120 of the Act) to support the personnel working full time to carry out the functions set forth in § 104.75.

(Secs. 104(b)(2), 120(b)(1)(F); 20 U.S.C. 2304, 2330.)

(b) Funds set aside under paragraph (a) of this section shall be used for:

(1) Salaries for full-time professional staff;

(2) Salaries for support staff; and

(3) Travel and other expenses directly related to the support of personnel in carrying out the functions set forth in § 104.75.

(Implements Sec. 104(b); 20 U.S.C. 2304.)

§ 104.75 Functions of full-time personnel.

Personnel designated under § 104.72 shall work full time to:

(a) Take action necessary to create awareness of programs and activities in vocational education designed to reduce sex bias and sex stereotyping in all voca-

tional education programs, including assisting the State board in publicizing the public hearings on the State plan in accordance with § 104.165(a);

(b) Gather, analyze, and disseminate data on the status of men and women students and employees in vocational education programs of the State;

(c) Develop and support actions to correct problems brought to the attention of this personnel through activities carried out under paragraph (b) and § 104.76, including creating awareness of the Title IX complaint process;

(d) Review the distribution of grants and contracts by the State board to assure that the interests and needs of women are addressed in all projects assisted under this Act;

(e) Review all vocational education programs (including work-study programs, cooperative vocational education programs, apprenticeship programs, and the placement of students who have successfully completed vocational education programs) in the State for sex bias;

(f) Monitor the implementation of laws prohibiting sex discrimination in all hiring, firing, and promotion procedures within the State relating to vocational education;

(g) Assist local educational agencies and other interested parties in the State in improving vocational education opportunities for women; and

(h) Make available to the State board, the State advisory council, the National Advisory Council on Vocational Education, the State Commission on the Status of Women, the Commissioner, and the general public, including individuals and organizations in the State concerned about sex bias in vocational education, information developed under this section;

(Sec. 104(b)(1); 20 U.S.C. 2304.)

(i) Review the self-evaluations required by Title IX; and

(Implements Sec. 104(b)(1); 20 U.S.C. 2304.)

(j) Review and submit recommendations with respect to overcoming sex bias and sex stereotyping in vocational education programs for the five-year State plan and its annual program plan prior to their submission to the Commissioner for approval.

(Secs. 104(b)(1), 109(a)(3)(B); 20 U.S.C. 2304, 2309.)

§ 104.76 Studies to carry out functions.

A State may use funds available under section 130 of the Act to support studies necessary to carry out the functions set forth in § 104.75.

(Implements Sec. 104(b)(1); 20 U.S.C. 2304.)

STATE ADVISORY COUNCIL

§ 104.91 Establishment and certification.

(a) *Establishment.* A State which desires to receive funds under the Act and the regulations in this part for any fiscal year shall establish a State advisory council. The council shall be appointed

by the Governor or, in a State in which the members of the State board are elected, by the State board itself.

(Sec. 105(a); 20 U.S.C. 2305.)

(b) *Appointment by the State board.* In order for the appointment power to be vested in the State board, under the authority of paragraph (a) of this section, a majority of its members must be individuals elected by the State legislature or directly by the eligible voters of the State or of the districts which the individuals represent.

(Interprets Sec. 105(a); 20 U.S.C. 2305.)

(c) *Certification.* The appointing authority, required by paragraph (a) of this section, shall certify to the Commissioner the establishment and membership of its State advisory council not less than 90 calendar days before the beginning of each fiscal year.

(Sec. 105(b); 20 U.S.C. 2305.)

§ 104.92 Membership.

(a) *Required representation.* The membership of the State advisory council shall include one or more individuals who:

(1) Represent, and are familiar with, the vocational needs and problems of management in the State;

(2) Represent, and are familiar with, the vocational needs and problems of labor in the State;

(3) Represent, and are familiar with, the vocational needs and problems of agriculture in the State;

(4) Represent State industrial and economic development agencies;

(5) Represent community and junior colleges;

(6) Represent other institutions of higher education, area vocational schools, technical institutes, and post-secondary agencies or institutions which provide programs of vocational or technical education and training;

(7) Have special knowledge, experience, or qualifications with respect to vocational education but are not involved in the administration of State or local vocational education programs;

(8) Represent, and are familiar with, public programs of vocational education in comprehensive secondary schools;

(9) Represent, and are familiar with, nonprofit private schools;

(10) Represent, and are familiar with, vocational guidance and counseling services;

(11) Represent State correctional institutions;

(12) Are vocational education teachers presently teaching in local educational agencies;

(13) Are currently serving as superintendents or other administrators of the local educational agencies;

(14) Are currently serving on local school boards;

(15) Represent the State Manpower Services Council established pursuant to section 107 of the Comprehensive Employment and Training Act of 1973;

(16) Represent school systems with large concentrations of persons who have special academic, social, economic, and cultural needs and of persons who have limited English-speaking ability;

(17) Are women with backgrounds and experiences in employment and training programs, and who are knowledgeable with respect to the special experiences and problems of sex discrimination in job training, and employment, and of sex stereotyping in vocational education, including women who are members of minority groups having special knowledge of the problems of discrimination in job training and employment against women in minority groups;

(18) Have special knowledge, experience, or qualifications with respect to the special educational needs of physically or mentally handicapped persons;

(19) Represent the general public, including at least one person representing and knowledgeable about the poor and disadvantaged; and

(20) Are vocational education students who are not qualified for membership under any of the preceding clauses of this sentence.

(Sec. 105(a); 20 U.S.C. 2305.)

(b) *Special considerations.* The appointing authority, pursuant to paragraph (a) of this section, shall insure that:

(1) The State advisory council has as a majority of its members persons who are not educators or administrators in the field of education;

(2) Members of the State advisory council do not represent more than one category;

(Sec. 105(a); 20 U.S.C. 2305.)

(3) There is appropriate representation of both sexes, racial and ethnic minorities, and the various geographic regions of the State. The Commissioner considers the term "appropriate representation" to be representation which generally reflects the percentage of women or minorities in the population of the State or the percentage of women or minorities in the work force of the State.

(Implements Sec. 105(a); 20 U.S.C. 2305.)

(4) In order to avoid any conflict of interest, the membership of the State advisory council excludes members of the State board and members of its staff who are directly involved in State administration of vocational education.

(Implements Sec. 105(d), (e); 20 U.S.C. 2305.)

(c) *Term of appointment.* Members of the State advisory council shall be appointed for terms of three years except that:

(1) In the case of the members appointed for fiscal year 1978, one-third of the membership shall be appointed for terms of one year each and one-third shall be appointed for terms of two years each;

(2) An appointment to fill a vacancy shall be for the term that remains unexpired; and

(Sec. 105(a); 20 U.S.C. 2305.)

(3) Members serving on the State advisory council on October 1, 1977, may continue to serve for the terms for which they were appointed, but for not more than two fiscal years unless reappointed.

(Sec. 204(b); 20 U.S.C. 2301 note.)

§ 104.93 Functions and responsibilities.

The State advisory council shall:

(a) Advise the State board in the development of the five-year State plan submitted under the authority of § 104.181, the annual program plan submitted under the authority of §§ 104.221, and 104.222, and the accountability report submitted under the authority of § 104.241. A statement describing its consultation with the State board shall be submitted with the five-year State plan, and the annual program plan and accountability report under § 104.171(f).

(Sec. 105(d)(1); 20 U.S.C. 2305.)

(b) Advise the State board on policy matters arising out of the administration of programs under the approved five-year State plan, the annual program plan, and the accountability report;

(Sec. 105(d)(1); 20 U.S.C. 2305.)

(c) Evaluate vocational education programs (including programs to overcome sex bias), services, and activities under the annual program plan, and publish and distribute the results thereof;

(Sec. 105(d)(2); 20 U.S.C. 2305.)

(d) Assist the State board in developing plans for State board evaluations under the authority of § 104.401 and monitor these evaluations;

(Sec. 112(b)(2); 20 U.S.C. 2312.)

(e) Prepare and submit through the State board to the Commissioner and to the National Advisory Council an annual evaluation report, accompanied by any additional comments of the State board as the State board deems appropriate;

(Sec. 105(d)(3); 20 U.S.C. 2305.)

(f) Identify, after consultation with the State Manpower Services Council, the vocational education and employment and training needs of the State and assess the extent to which vocational education, employment training, vocational rehabilitation, special education, and other programs assisted under this and related Acts represent a consistent, integrated, and coordinated approach to meeting these needs;

(Interprets Sec. 105(d)(4)(A); 20 U.S.C. 2305.)

(g) Comment, at least annually, on the reports of the State Manpower Services Council;

(Sec. 105(d)(4)(B); 20 U.S.C. 2305.)

(h) Prepare and submit to the Commissioner within 60 calendar days after the Commissioner's acceptance of certification of establishment and membership, submitted pursuant to § 104.91(c), an annual budget covering the proposed

expenditures of the State advisory council for the following fiscal year; and

(Implements Sec. 105(f); 20 U.S.C. 2305.)

(i) Provide technical assistance to eligible recipients and local advisory councils as may be requested by the recipients to establish and operate local advisory councils.

(Sec. 105(g); 20 U.S.C. 2305.)

§ 104.94 Meetings and rules.

The State advisory council shall meet within 30 calendar days after certification has been accepted by the Commissioner and shall select from among its membership a chairperson. The time, place, manner of meetings, as well as the councils operating procedures and staffing, shall be as provided by the rules of the State advisory council. The rules shall provide for not less than one public meeting each year at which the public is given an opportunity to express views concerning the vocational education program of the State.

(Sec. 105(c); 20 U.S.C. 2305.)

§ 104.95 Staff and services.

(a) The State advisory council is authorized:

(1) To obtain the services of professional, technical, and clerical personnel as may be necessary to enable it to carry out its functions described in § 104.93. Such personnel shall not include staff members of the State board and shall be subject only to the supervision and direction of the State advisory council with respect to all services performed by them.

(2) To contract for such services as may be necessary to carry out its evaluation functions, independent of programmatic and administrative control by other State boards, agencies, and individuals.

(Implements sec. 105(e); 20 U.S.C. 2305.)

(b) Members of the State advisory council and its staff, while serving on the business of the council, may receive subsistence, travel allowances, and compensation in accordance with State law, regulations, and practices applicable to persons performing comparable duties and services.

(Implements Sec. 105(e); 20 U.S.C. 2305.)

§ 104.96 Fiscal control.

(a) The State advisory council shall designate an appropriate State agency or other public agency, eligible to receive funds under the Act, to act as its fiscal agent for purposes of disbursement and accounting and for having its accounts audited at least every two years. The fiscal agent shall send a copy of the audit report to the Commissioner.

(Implements Sec. 105(f)(2); 20 U.S.C. 2305.)

(b) The expenditure of council funds is determined solely by the State advisory council for carrying out its function except as provided in § 104.95(b). Council funds may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual.

(Sec. 105(f)(2); 20 U.S.C. 2305.)

(c) All expenditures of council funds shall be in accordance with the budget approved by the Commissioner under the authority of § 104.93(h).

(Implements Sec. 105(f)(2); 20 U.S.C. 2305.)

(d) The State advisory council shall submit to the Commissioner a financial status report within 90 days after the end of the fiscal year.

(45 CFR 100b.403.)

§ 104.97 Annual evaluation report.

The State advisory council shall prepare and submit to the Commissioner and to the National Advisory Council on Vocational Education, through the State board, within 90 days after the end of the fiscal year an annual evaluation report under the authority of § 104.93(e). This report shall include:

(a) The results of the evaluations by the State advisory council of the effectiveness of programs, services, and activities carried out in the year under review in meeting the program goals set forth in the five-year State plan and the annual program plan.

(Sec. 105(d)(3)(A); 20 U.S.C. 2305.)

(b) A review of the program evaluation results developed by the State under the authority of § 104.401;

(c) A review of the analysis of the distribution of Federal funds within the State submitted by the State according to the annual program plan and the accountability report;

(Sec. 105(d)(3)(A); 20 U.S.C. 2305.)

(d) Recommended changes in programs, services, and activities as may be considered necessary by the State advisory council based on the results of its evaluation;

(Sec. 105(d)(3)(B); 20 U.S.C. 2305.)

(e) Comments on the reports of the State Manpower Services Council; and

(f) Identification of the vocational education and employment and training needs of the State and the assessment of the extent to which vocational education, employment training, vocational rehabilitation, special education, and other programs assisted under this and related Act represent a consistent, integrated, and coordinated approach to meeting such needs.

(Sec. 105(d)(4)(A); 20 U.S.C. 2305.)

LOCAL ADVISORY COUNCILS

§ 104.111 Establishment of local advisory councils.

(a) Each eligible recipient (that is, each local educational agency or postsecondary educational institution which receives Federal assistance under the Act) shall establish a local advisory council on vocational education.

(b) The local advisory council may be established for:

(1) Program areas;

(2) Schools;

(3) The community; or

(4) The region in which the eligible recipient is located.

(c) The local advisory council shall be composed of representatives of the general public including at least a representative of:

(1) Business;

(2) Industry; and

(3) Labor.

(Sec. 105(g)(1); 20 U.S.C. 2305.)

(d) Each eligible recipient shall establish a local advisory council which has an appropriate representation of both sexes and an appropriate representation of the racial and ethnic minorities found in the program areas, schools, community, or region which the local advisory council serves.

(e) An eligible recipient may form a local advisory council composed of representatives from several craft committees, or representatives of several school councils, having the requisite representation in paragraph (c) of this section.

(Implements Sec. 105(g)(1); 20 U.S.C. 2305.)

§ 104.112 Duties of local advisory councils.

(a) The local advisory council shall advise the eligible recipient on:

(1) Current job needs; and

(2) The relevance of programs (courses) being offered by the local educational agency or postsecondary educational agency in meeting current job needs.

(Sec. 105(g)(1); 20 U.S.C. 2305.)

(b) The local advisory council shall consult with the eligible recipient in developing its application to the State board.

(Sec. 106(a)(4)(A); 20 U.S.C. 2306.)

VOCATIONAL EDUCATION INFORMATION DATA SYSTEM

§ 104.116 Vocational education data system.

(a) The Commissioner and the Administrator of NCES will jointly develop information elements and uniform definitions for a national vocational education data reporting and accounting system.

(b) This system will include information resulting from the evaluations under section 112(b) of the Act (§§ 104.402 and 104.404) and other information on vocational:

(1) Students (including information on their race and sex);

(2) Programs;

(3) Program completers and leavers;

(4) Staff;

(5) Facilities; and

(6) Expenditures.

(c) This system will be compatible insofar as possible with the occupational information data system developed under section 161(b) of the Act by the National Occupational Information Coordinating Committee and with other in-

formation systems involving data on programs assisted under CETA.

(Interprets 161(a); 20 U.S.C. 2391.)

NATIONAL AND STATE OCCUPATIONAL INFORMATION COORDINATING COMMITTEES

§ 104.121 Establishment of National Occupational Information Coordinating Committee.

Section 161(b) of the Act establishes a National Occupational Information Coordinating Committee composed of the Commissioner of Education and the Administrator of the National Center for Education Statistics, from the Department of Health, Education, and Welfare, and the Assistant Secretary of Labor for Employment and Training and the Commissioner of the Bureau of Labor Statistics, from the Department of Labor.

(Sec. 161(b); 20 U.S.C. 2391(b).)

§ 104.122 Requirement to establish State occupational information coordinating committees.

(a) Each State receiving assistance under the Act is required by section 161(b)(2) of the Act to establish a State occupational information coordinating committee by September 30, 1977.

(Implements Sec. 161(b)(2); 20 U.S.C. 2391.)

(b) The State occupational information coordinating committee shall be composed of a representative of each of the following:

- (1) The State board;
- (2) The State employment security agency;
- (3) The State Manpower Services Council; and
- (4) The agency administering the vocational rehabilitation program.

(Sec. 161(b)(2); 20 U.S.C. 2391.)

(c) The representatives shall be selected by the respective State board, agency, or council.

(Implements Sec. 161(b)(2); 20 U.S.C. 2391.)

(Implements Secs. 103(a)(1)(A), 161(b)(2); 20 U.S.C. 2302, 2391)

§ 104.123 Duties of the State occupational information coordinating committee.

(a) The State occupational information coordinating committee, with funds available to it from the National Occupational Information Coordinating Committee shall implement an occupational information system in the State which will meet the common needs for the planning for, and operation of, programs of the State board assisted under this Act and of the administering agencies under the Comprehensive Employment Training Act.

(Sec. 161(b)(2); 20 U.S.C. 2391.)

(b) A State occupational information coordinating committee shall use funds received from the National Occupational Information Coordinating Committee in accordance with guidance, direction or standards adopted by the National Oc-

cupational Information Coordinating Committee.

(Implements Sec. 161(b)(2); 20 U.S.C. 2391.)

GENERAL APPLICATION

§ 104.141 Requirement for filing a general application.

(a) In order to participate in programs authorized under the Act, the State board for vocational education must submit to, and maintain on file with, the Commissioner a general application.

(Sec. 106(a); 20 U.S.C. 2306.)

(b) This general application must be signed by the executive officer of the State board and submitted by the State board to the Commissioner by July 1, 1977, for eligibility for Federal funds under the Act.

(c) This general application is filed only once with the Commissioner and shall remain in effect until the provisions of section 106 of the Act are changed or expire.

(Implements Sec. 106(a); 20 U.S.C. 2306; Sen. Rept. No. 94-882, pp. 68-72.)

(d) This general application is in lieu of the general application required by section 434(b) of the General Education Provisions Act.

(Sec. 106(b); 20 U.S.C. 2306.)

(e) The procedures to be used by the State board to carry out assurances 4, 5, 9, and 10 in the general application shall be included in the five-year State plan (§ 104.182).

(Implements Sec. 109(a)(1); 20 U.S.C. 2309.)

(f) This general application shall contain the following 12 assurances; of these, ten are set forth in section 106(a) of Act:

(1) that the State will provide for such methods of administration as are necessary for the proper and efficient administration of the Act;

(2) that the State board will cooperate with the State advisory council on vocational education in carrying out its duties pursuant to section 105 and with the agencies, councils, and individuals specified in sections 107 and 108 to be involved in the formulation of the five-year State plan and of the annual program plans and accountability reports;

(3) that the State will comply with any requests of the Commissioner for making such reports as the Commissioner may reasonably require to carry out his functions under this Act;

(4) that funds will be distributed to eligible recipients on the basis of annual applications which—

(A) have been developed in consultation (i) with representatives of the educational and training resources available in the area to be served by the applicant and (ii) with the local advisory council required to be established by this Act to assist such recipients;

(B) (i) describe the vocational education needs of potential students in the area or community served by the applicant and indicate how, and to what extent, the program proposed in the application will meet such needs, and (ii) describe how the findings of any evaluations of programs operated by such applicant during previous years, includ-

ing those required by this Act, have been used to develop the program proposed in the application.

(C) describe how the activities proposed in the application relate to manpower programs conducted in the area by a prime sponsor established under the Comprehensive Employment and Training Act of 1973, if any, to assure a coordinated approach to meeting the vocational education and training needs of the area or community, and

(D) describe the relationship between vocational education programs proposed to be conducted with funds under this Act and other programs in the area or community which are supported by State and local funds;

and that any eligible recipient dissatisfied with final action with respect to any application for funds under this Act shall be given reasonable notice and opportunity for a hearing;

(5) (A) that the State shall, in considering the approval of such applications, give priority to those applicants which—

(i) are located in economically depressed areas and areas with high rates of unemployment, and are unable to provide the resources necessary to meet the vocational education needs of those areas without Federal assistance, and

(ii) propose programs which are new to the area to be served and which are designed to meet new and emerging manpower needs and job opportunities in the area and, where relevant, in the State and the Nation; and

(B) that the State shall, in determining the amount of funds available under this Act which shall be made available to those applicants approved for funding, base such distribution on economic, social and demographic factors relating to the needs for vocational education among the various populations and the various areas of the State, except that—

(i) the State will use as the two most important factors in determining this distribution (I) in the case of local educational agencies, the relative financial ability of such agencies to provide the resources necessary to meet the need for vocational education in the areas they service and the relative number or concentration of low-income families or individuals within such agencies, and (II) in the case of other eligible recipients, the relative financial ability of such recipients to provide the resources necessary to initiate or maintain vocational education programs to meet the needs of their students and the relative number or concentration of students whom they serve whose education imposes higher than average costs, such as handicapped students, students from low-income families, and students from families in which English is not the dominant language; and

(ii) the State will not allocate such funds among eligible recipients within the State on the basis of per capita enrollment or through matching of local expenditures on a uniform percentage basis, or deny funds to any recipient which is making a reasonable tax effort solely because such recipient is unable to pay the non-Federal share of the cost of new programs;

(6) that Federal funds made available under this Act will be so used as to supplement, and to the extent practicable, increase the amount of State and local funds that would in the absence of such Federal funds be made available for the uses specified in the Act, and in no case supplant such State or local funds;

(7) that the State will make provision for such fiscal control and fund accounting procedures as may be necessary to secure proper disbursement of, and accounting for, Federal

funds paid to the State (including such funds paid by the State to eligible recipients under this Act);

(8) that funds received under this Act will not be used for any program of vocational education (except personnel training programs under section 135, renovation programs under subpart 4 of part B, and home-making programs under subpart 5 of this part) which cannot be demonstrated to prepare students for employment, be necessary to prepare individuals for successful completion of such a program, or be of significant assistance to individuals enrolled in making an informed and meaningful occupational choice as an integral part of a program of orientation and preparation;

(9) that the State has instituted policies and procedures to insure that copies of the State plan and annual program plan and accountability report and all statements of general policies, rules, regulations, and procedures issued by the State board and by any State agencies to which any responsibility is delegated by the State board concerning the administration of such plan and report will be made reasonably available to the public; and

(10) that the funds used for purposes of section 110(a) are consistent with the State plan submitted pursuant to section 613(a) of the Education of the Handicapped Act.

(Sec. 106(a); 20 U.S.C. 2306.)

(11) The State board shall also assure that it will cooperate with the Administrator of the National Center for Education Statistics, HEW, in supplying information and complying in its reports with the information elements and definition requirements, as specified in section 161(a) of the Act.

(Implements Sec. 161(a); 20 U.S.C. 2391.)

(12) The State board shall also assure that students served by Indian tribal organizations applying for or receiving funds under the Commissioner's discretionary programs, under authority of section 103(a)(1)(B) of the Act, shall be afforded the opportunity to participate in vocational education programs administered by the State.

(Implements Sec. 103(a)(1)(B); 20 U.S.C. 2303.)

DEVELOPMENT OF FIVE-YEAR STATE PLAN

§ 104.161 Submission of five-year State plan.

Any State desiring to receive funds under the Act shall submit to the Commissioner a five-year State plan by:

- (a) July 1, 1977, for fiscal years 1978 through 1982; and
- (b) July 1, 1982, for fiscal years 1983 through 1987.

(Sec. 107(a)(1); 20 U.S.C. 2307.)

§ 104.162 Representation required in the development of the five-year State plan.

In formulating its five-year State plan, the State board is required to involve the active participation of a representative of:

(a) The State agency having responsibility for secondary vocational education programs, designated by that agency;

(b) The State agency, if a separate agency exists, having responsibility for postsecondary vocational education programs, designated by that agency;

(c) The State agency, if a separate agency exists, having responsibility for community and junior colleges, designated by that agency;

(d) The State agency, if a separate agency exists, having responsibility for institutions of higher education in the State, designated by that agency;

(Sec. 107(a)(1); 20 U.S.C. 2307.)

(e) A local school board or committee, as designated by the appropriate appointing authority under State law;

(Interprets Sec. 107(a)(1)(E); 20 U.S.C. 2307.)

(f) Vocational education teachers, as designated by the appropriate appointing authority under State law;

(Interprets Sec. 107(a)(1)(F); 20 U.S.C. 2307.)

(g) Local school administrators, as designated by the appropriate appointing authority under State law;

(Interprets Sec. 107(a)(1)(G); 20 U.S.C. 2307.)

(h) The State Manpower Services Council appointed under the authority of section 107(a)(2)(A)(i) of the Comprehensive Employment and Training Act of 1973, designated by that Council;

(i) The State agency or commission responsible for comprehensive planning in postsecondary education, which planning reflects programs offered by public, private nonprofit, and proprietary institutions, and includes occupational programs at a less-than-baccalaureate degree level, if a separate agency or commission exists, designated by that agency or commission; and

(j) The State advisory council on vocational education, designated by that council.

(Sec. 107(a)(1); 20 U.S.C. 2307.)

§ 104.163 Meetings of participating representatives.

The State board shall convene, as a group, the representatives of the agencies, councils, and individuals specified in § 104.162 for at least four meetings during the development of the five-year State plan. These meetings will be convened to accomplish the following purposes:

(a) First meeting: To plan for the development of the first draft of the five-year State plan;

(b) Second meeting: To consider the first draft of the five-year State plan;

(c) Third meeting: To consider the draft of the five-year State plan after it has been rewritten to reflect the results of the second meeting of the planning group; and

(d) Fourth meeting: To recommend for adoption the final five-year State plan.

(Sec. 107(a)(1); 20 U.S.C. 2307.)

§ 104.164 State board adoption of the five-year State plan.

(a) If the participating agencies, councils, and individuals are not able to agree upon the provisions of the five-year State plan, the State board will make a final decision.

(b) In accordance with § 104.171(b)(1), the State board shall include in the five-year State plan:

(1) Any recommendation which is rejected by the State board indicating its source (i.e., the name of the individual and agency or council affiliation); and

(2) The reasons of the State board for rejecting the recommendation.

(Sec. 107(a)(1); 20 U.S.C. 2307.)

§ 104.165 Public hearings on the five-year State plan.

(a) In formulating the five-year State plan, the State board is required to conduct a series of public hearings. This series of public hearings shall be conducted:

(1) During the development, prior State plan;

(2) After giving sufficient public notice; and

(3) Throughout all regions of the State.

(b) The purpose of these public hearings is to provide the opportunity for all segments of the population of the State to give their views on:

(1) The goals which ought to be adopted in the State plan;

(2) The programs to be offered under the State plan;

(3) The allocation of responsibility for programs (courses) among the various levels of education and among the various institutions of the State; and

(4) The allocation of local, State, and Federal resources to meet these goals.

(c) In accordance with § 104.171(d), the State board shall include in the five-year State plan:

(1) The views expressed at the public hearings or comments submitted in writing;

(2) A description of how these views are reflected in the provisions of the five-year State plan; and

(3) The reasons for rejecting any view which is not accepted for inclusion in the five-year State plan.

(Sec. 107(a)(2); 20 U.S.C. 2307.)

§ 104.171 Certification of plans.

As used in this section, the term "plans" refers to the five-year State plan and the annual program plan and accountability report. The plans submitted shall include, as attachments, the following certifications:

(a) Certification by the State attorney general. The State attorney general, or other official designated in accordance with State law to advise the State board on legal matters, shall certify that the State board named in the plan is the sole agency which has authority under State law to submit the plan and to administer or supervise the administration of the plan.

tion of vocational education, and that all the plan's provisions with respect to the use of funds under the Act can be carried out by the State.

(Implements Sec. 104(a)(1); 20 U.S.C. 2304.)

(b) *Certification of involvement of designated agencies.*

(1) The State board shall certify that each of the agencies, councils, and individuals required in § 104.162 has been afforded the opportunity to be involved. The State board shall include in this certification all recommendations rejected by the Board, complete identification of the agency, council, or individual having made the rejected recommendation and the reasons for rejecting these recommendations, as required by § 104.164(b). This certification shall also indicate the meetings held under the authority of § 104.163.

(2) Each representative required in § 104.162 shall certify that he or she has had the opportunity to participate actively in formulating the plan.

(Implements Secs. 104(a)(3), 107(a)(1); 20 U.S.C. 2304, 2307.)

(c) *Certification of delegation.* The State board shall certify any delegation by the State board of responsibilities for administration, operation, or supervision of vocational education programs to other appropriate State agencies. The statement shall set forth the procedures used for delegation, the specific responsibilities delegated, and the specific agency or agencies involved.

(Implements Sec. 104(a)(2); 20 U.S.C. 2304.)

(d) *Certification of public hearings.* The State board shall certify the method used to provide reasonable notice and opportunity for public hearings throughout all regions of the State in order to permit all segments of the population to give their views on the goals for vocational educational which ought to be adopted in the plan in terms of the elements listed in §§ 104.165(b) and 104.207(b). The statement shall also include the views expressed at the hearings and a description of how those views are reflected in the plan. If any views are not reflected, the statement shall set out the reasons for rejecting them.

(Implements Sec. 107(a)(2), 108(a)(2); 20 U.S.C. 2307, 2308.)

(e) *Certification of local advisory councils.* The State board shall certify that eligible recipients within the State have been notified of their responsibility to establish local advisory councils. The State board shall also certify that eligible recipients receiving assistance under the Act to operate vocational education programs have established these councils.

(Implements Sec. 105(g); 20 U.S.C. 2305.)

(f) *Certification of consultation with State advisory council.* The State advisory council shall certify that the plan was prepared in consultation with the council.

(Implements Sec. 105(d); 20 U.S.C. 2305.)

(g) *Certification by full-time personnel of opportunity to review the plans.*

The personnel assigned full time to review programs within the State to assure equal access to vocational education by both men and women shall certify that the opportunity to review the plan has been afforded.

(Implements Sec. 109(a)(3)(B); 20 U.S.C. 2309.)

(h) *Certification of adoption by State board.* The State board shall certify that development of the plan has been coordinated with the agencies, councils, and individuals as required by § 104.162 and that the final decision has been adopted by the State board, and that the plan constitutes the basis for operation and administration of the State's vocational education program.

(Implements Sec. 104(a)(1); 20 U.S.C. 2304.)

§ 104.181 Content of five-year State plan.

The State board shall submit the five-year State plan to the Commissioner, through the appropriate HEW Regional Office, by the July 1st preceding the beginning of the first fiscal year for which the plan is to take effect. The plan shall be composed of the following two parts:

(a) Procedures for carrying out certain assurances of the general application as required in § 104.182; and

(b) Program provisions as required in §§ 104.183 through 104.188.

(Sec. 107(b); 20 U.S.C. 2307.)

§ 104.182 Procedures to assure compliance with the general application.

The State board in its five-year State plan shall:

(a) Describe the information which the State board will require in local applications in order to meet the requirements of § 104.141(f)(4);

(Sec. 106(a)(4); 20 U.S.C. 2306.)

(b) Describe the procedures for affording eligible recipients reasonable notice of an opportunity for a hearing, for conducting the hearing, for providing a written record of the hearing, and for informing the recipient in writing of the decisions and reasons therefor;

(Implements Sec. 106(a)(4); 20 U.S.C. 2306.)

(c) Describe how the State board, for purposes of giving priority to applications, determines:

(1) Economically depressed areas and areas with high rates of unemployment which are unable to provide the resources necessary to meet the vocational education needs without Federal assistance; and

(2) Programs new to the area which are designed to meet new and emerging manpower needs and job opportunities in the area (and, where relevant, in the State and Nation);

(Implements Sec. 106(a)(5)(A); 20 U.S.C. 2306.)

(d) Describe the policies and procedures by which the State board determines how the amount of funds available under this Act will be made avail-

able to those applicants approved for funding, using the factors specified in § 104.141(f)(5)(B);

(Sec. 106(a)(5)(B); 20 U.S.C. 2306.)

(e) Set forth the policies and procedures instituted for public disclosure in accordance with § 104.141(f)(9); and

(Sec. 106(a)(9); 20 U.S.C. 2306.)

(f) Describe the procedures for insuring that funds for vocational programs for handicapped persons are used in a manner consistent with § 104.141(f)(10). The statement shall describe how the program provided each handicapped child will be planned and coordinated in conformity with and as a part of the child's individualized educational program as required by the Education of the Handicapped Act.

(Sec. 106(a)(10); 20 U.S.C. 2306.)

§ 104.183 Assessment of employment opportunities.

(a) The five-year State plan shall include an assessment of current and future needs for workers (job skills) within the State and, where appropriate, within the pertinent region of the country.

(b) This assessment shall reflect the latest available data of present and projected employment, including the data available from the State occupational information coordinating committee.

(Sec. 107(b)(1); 20 U.S.C. 2307.)

§ 104.184 Goals to meet employment needs.

The five-year State plan shall describe clearly the goals the State will seek to achieve with respect to its needs for workers identified in § 104.183 by the end of the five-year period covered by the five-year State plan. This description shall be in terms of the following four elements and shall include the reasons for choosing these elements:

(a) The programs (courses) and other training opportunities to be offered to meet the needs identified in § 104.183; (For the purposes of this part, the term "program" refers to OE instructional programs, as defined by the Office of Education in *Handbook VI, Standard Terminology for Curriculum and Instruction in Local and State School Systems* (1970), and means a planned sequence of courses, services, or activities designed to meet an occupational objective.)

(b) The projected enrollments of these programs and training opportunities;

(c) The allocations of responsibility for the offerings of those programs and training opportunities among the secondary, postsecondary, and adult levels of education and among the various types of institutions of the State; and

(d) The allocations of all local, State, and Federal financial resources available in the State for the programs and training opportunities among the secondary, postsecondary, and adult levels of education and among the various types of institutions of the State.

(Sec. 107(b)(2); 20 U.S.C. 2307.)

§ 104.185 Funding to meet employment needs.

(a) The five-year State plan shall set forth precisely the planned uses of Federal, State, and local education funds for each fiscal year of the State plan;

(b) The five-year State plan shall indicate how this allocation of funds will meet the goals identified in § 104.184;

(c) The description of the planned uses of funds shall be in terms of the four elements of § 104.184 (this does not require duplication of § 104.184(d));

(Sec. 107(b)(3)(A); 20 U.S.C. 2307.)

(d) The five-year State plan shall indicate the planned uses of funds under section 120(b)(1)(D) and section 130(b)(7) of this Act for:

- (1) State administration;
- (2) Local administration; and

(Implements Sec. 107(b)(3)(A); 20 U.S.C. 2307.)

(e) The five-year State plan shall set forth the reasons for choosing these particular uses of funds, except that the State will continue to use approximately the same amount of its State grant under subpart 2 (basic grant) of this part for programs in secondary schools during fiscal years 1978 and 1979 as it used during fiscal years 1975 and 1976, unless the State is able to demonstrate in its five-year State plan the need to shift funds from that use.

(Sec. 107(b)(3)(A); 20 U.S.C. 2307.)

§ 104.186 Funding to meet program (purpose) needs.

(a) The five-year State plan shall set forth precisely the intended uses of funds under the Act for:

- (1) Basic grant programs in § 104.501;
- (2) Program improvement and supportive services in § 104.701;
- (3) Special programs for the disadvantaged in § 104.801 (funded under section 102(b) of the Act); and
- (4) Consumer and homemaking education in § 104.901 (funded under section 102(c) of the Act).

(b) The five-year State plan shall set out the reasons for choosing the uses described in paragraph (a) of this section.

(c) The five-year State plan shall set forth precisely the intended uses of Federal funds, in accordance with the minimum percentages in §§ 104.312 and 104.313 to meet the special needs of:

- (1) Handicapped persons;
- (2) Disadvantaged persons; and
- (3) Persons of limited English-speaking ability.

(d) The five-year State plan shall also set forth the intended allocation of State and local funds, in accordance with the matching requirements in § 104.303, to meet the special needs of:

- (1) Handicapped persons;
- (2) Disadvantaged persons; and
- (3) Persons of limited English-speaking ability.

(Implements secs. 107(b)(3)(B), 110(a), (b); 20 U.S.C. 2307, 2310.)

§ 104.187 Policies for eradicating sex discrimination.

(a) The five-year State plan shall set forth a detailed description of policies and procedures which the State will follow to assure equal access to vocational education programs by both women and men.

This description shall include:

(1) Actions to be taken to overcome sex discrimination and sex stereotyping in all State and local vocational education programs;

(2) Incentive adopted by the State for eligible recipients to:

- (i) Encourage the enrollment of both women and men in nontraditional courses of study; and
- (ii) Develop model programs to reduce sex bias and sex stereotyping in training for and placement in all occupations.

(b) The five-year State plan shall set forth a program to assess and meet the needs of persons described in § 104.621. This program shall include:

- (1) Special courses for these persons to learn how to seek employment; and
- (2) Placement services for these persons once they complete the vocational education program.

(Sec. 107(b)(4); 20 U.S.C. 2307.)

§ 104.188 Coordination between manpower training programs and vocational education programs.

The five-year State plan shall describe the mechanism established for coordinating vocational education programs with manpower training programs conducted by prime sponsors under the Comprehensive Employment and Training Act (CETA), Pub. L. 93-203, and vocational education programs assisted under this Act. This description shall include the criteria developed to avoid duplication of programs under this Act and CETA.

(Sec. 107(b)(5); 20 U.S.C. 2307; Sen. Rept. 94-882; p. 68.)

DEVELOPMENT OF ANNUAL PROGRAM PLAN AND ACCOUNTABILITY REPORT

§ 104.202 Due date of annual program plan.

For each fiscal year, the annual program plan is due by the July 1st preceding the beginning of the applicable fiscal year. For example, the first annual program plan is required for fiscal year 1978 and is due in the appropriate HEW Regional Office by July 1, 1977.

(Sec. 108(b); 20 U.S.C. 2308.)

§ 104.203 Due date of annual accountability report.

For each fiscal year, the annual accountability report is due by the July 1st following the completion of the applicable fiscal year. For example, the first annual accountability report is required for fiscal year 1978 and is due in the appropriate HEW Regional Office by July 1, 1979.

(Sec. 108(b); 20 U.S.C. 2308.)

§ 104.204 Representation required in the development of the annual program plan and accountability report.

In formulating the annual program plan and accountability report for any given fiscal year, the State board is required to involve the active participation of a representative of each group set forth in § 104.162 (a) through (j).

(Secs. 107(a)(1), 108(a)(1); 20 U.S.C. 2307, 2308.)

§ 104.205 Meetings of participating representatives.

The State board shall convene, as a group, the representatives of the agencies, councils, and individuals specified in § 104.204 for at least three meetings during each fiscal year. These meetings will be convened to accomplish the following purposes:

(a) First meeting: To plan for the development of the first draft of the annual program plan and the accountability report;

(b) Second meeting: To consider the draft of the annual program plan and accountability report;

(c) Third meeting: To recommend for adoption the final annual program plan and accountability report.

(Sec. 108(a)(1); 20 U.S.C. 2308.)

§ 104.206 State board adoption of the annual program plan and accountability report.

(a) If the participating agencies, councils, and individuals are not able to agree upon the provisions of the annual program plan or the accountability report, the State board will make a final decision.

(b) The State board shall include in the annual program plan or, as appropriate, in the accountability report:

(1) Any recommendation which is rejected by the State board indicating its source (including the name of the individual and agency or council affiliation); and

(2) The reasons of the State board for rejecting the recommendation.

(Sec. 108(a)(1); 20 U.S.C. 2308.)

§ 104.207 Public hearing on the annual program plan and accountability report.

(a) In formulating the annual program plan and accountability report, the State board is required to conduct a public hearing. This public hearing shall be conducted:

(1) During the development, prior to adoption of the annual program plan and accountability report; and

(2) After giving sufficient public notice.

(b) The purpose of this public hearing is to provide an opportunity for all segments of the population of the State to give their views on:

(1) The goals which ought to be adopted in the annual program plan;

(2) The programs to be offered under the annual program plan;

(3) The allocation of responsibility for programs among the various levels of education and among the various institutions of the State; and

(4) The allocation of local, State, and Federal resources to meet these goals. (Interprets Sec. 108(a)(2); 20 U.S.C. 2308.)

(c) The State board shall include in the annual program plan or, as appropriate, in the accountability report:

(1) The views expressed at the public hearing or comments submitted in writing;

(2) A description of how these views are reflected in the provisions of the annual program plan or the accountability report; and

(3) The reasons for rejecting any view which is not accepted for inclusion in the annual program plan or accountability report.

(Sec. 108(a)(2); 20 U.S.C. 2308.)

§ 104.221 Content of annual program plan for fiscal year 1978.

A five-year State plan which includes the program provisions in §§ 104.183 through 104.186 on a year-by-year basis will meet the requirements of the Act for the annual program plan, except that in addition to the planned uses of funds in § 104.186, the plan shall also set out precisely the proposed distribution of such funds among eligible recipients, together with an analysis of the manner in which such distribution complies with the assurance given in the general application and in accordance with the policies and procedures in § 104.182(d).

(Interprets 108(b)(1); 20 U.S.C. 2308.)

§ 104.222 Content of annual program plans for the fiscal years following 1978.

The plan shall contain: (a) Any updating of the five-year State plan, as submitted under §§ 104.183 and 104.184, considered necessary to reflect later or more accurate employment data or a different level of funding than was anticipated;

(b) A description of how the uses of funds proposed for the fiscal year in § 104.185 will be complied with or changed (in light of anticipated appropriations) and the reasons for the changes;

(c) A description of how the uses of funds under the Act proposed for the fiscal year in § 104.186 will be complied with or changed (in light of anticipated appropriations) and the reasons for the changes;

(d) A description of how funds used in (b) and (c) will comply with the minimum percentages, matching, and maintenance of effort requirements in § 104.301;

(e) The additional provisions set forth in § 104.221;

(f) The results of the:

(1) Coordination of programs funded under this Act and manpower training programs;

(2) Compliance of the State plan with the provisions contained in § 104.187 concerning providing equal access to

programs by both men and women; and

(3) Participation of local advisory councils required to be established under § 104.171(e).

(Implements Sec. 108(b)(1); 20 U.S.C. 2308.)

§ 104.241 Content of the accountability report.

(a) The accountability report shall:

(1) Show the extent to which the State, during the fiscal year preceding the submission of the report, has achieved the goals of the approved five-year State plan, including a description in terms of the elements in § 104.184;

(2) Show the degree to which proposed uses of Federal, State, and local funds in § 104.222(b) have been complied with, including a description in terms of the elements in § 104.185;

(3) Show in detail how the funds used in § 104.222(d) complied with the minimum percentage, matching, and maintenance of effort requirements in § 104.301;

(Implements Sec. 108(b)(2)(A).)

(4) Show in detail how funds under the Act allocated for programs in § 104.186 have been used during the fiscal year, including:

(i) A description of uses of funds as set out in §§ 104.222(c);

(ii) A description of the distribution of funds available for these sections among local educational agencies and other eligible recipients in conformity with § 104.222(e); and

(iii) The results achieved by the uses of these funds.

(Sec. 108(b)(2)(B); 20 U.S.C. 2308.)

(b) The accountability report shall contain:

(1) A summary of the evaluation of programs conducted by the State in accordance with §§ 104.402 and 104.404; and

(2) A description of how the evaluation information has been used to improve the State's programs of vocational education, including consideration given to each recommendation in the evaluation report of the State advisory council for vocational education.

(Sec. 108(b)(2)(C); 20 U.S.C. 2308.)

APPROVAL OF FIVE-YEAR STATE PLAN AND ANNUAL PROGRAM PLAN AND ACCOUNTABILITY REPORT

§ 104.261 Conditions for approval of five-year State plan.

The Commissioner will not approve a five-year State plan until the Commissioner:

(a) Makes specific findings in writing as to the compliance of the five-year State plan with the provisions of the Act and applicable regulations;

(b) Makes a determination that adequate procedures are set forth, in accordance with § 104.182, to insure that assurances of the general application will be carried out;

(c) Makes a determination that adequate procedures are set forth in the five-year State plan to insure that the provisions of the plan will be carried out;

(Sec. 109(a)(1); 20 U.S.C. 2309.)

(d) Has received assurances that the full-time personnel assigned to review programs within the State to assure equal access by both men and women have been afforded the opportunity to review the five-year State plan; and

(Sec. 109(a)(3)(B); 20 U.S.C. 2309.)

(e) Makes a determination that the State has complied in preparing the five-year State plan with the nationally uniform definitions and information elements which have been developed under the authority of section 161 of the Act.

(Sec. 109(a)(3)(C); 20 U.S.C. 2309.)

§ 104.262 Conditions for approval of annual program plan and accountability report.

The Commissioner will not approve an annual program plan and accountability report until the Commissioner:

(a) Makes specific findings in writing as to the compliance of the annual program plan and accountability report with the provisions of the Act and applicable regulations;

(b) Makes a determination that adequate procedures are set forth to insure that the assurances of the general application will be carried out;

(c) Makes a determination that adequate procedures are set forth in the annual program plan and accountability report to insure that the provisions of the plan will be carried out;

(d) Makes a determination that the annual program plan and accountability report show progress in achieving the goals set forth in the approved five-year State plan;

(Sec. 109(a)(2); 20 U.S.C. 2309.)

(e) Has received assurances that the full-time personnel assigned to review programs within the State to assure equal access by both men and women have been afforded the opportunity to review the annual program plan and accountability report; and

(Sec. 109(a)(3)(B); 20 U.S.C. 2309.)

(f) Makes a determination that the State has complied in preparing the annual program plan and accountability report with the nationally uniform definitions and information elements which have been developed under the authority of section 161 of the Act.

(Sec. 109(a)(3)(C); 20 U.S.C. 2309.)

§ 104.263 Notice of approval or disapproval.

After reviewing the five-year State plan, the annual program plan, and the accountability report, the Commissioner will notify the State board, in writing, of the granting or withholding of approval.

(Sec. 109(a), (b); 20 U.S.C. 2309.)

WITHHOLDING OF APPROVAL OF PLAN

§ 104.271 Disapproval of plan.

The Commissioner:

(a) Will not finally disapprove a State plan without first affording the State

board reasonable notice and opportunity for a hearing;

(Sec. 109(b)(1); 20 U.S.C. 2309.)

(b) Will not disapprove a State plan solely on the basis of the distribution of State and local expenditures for vocational education;

(Sec. 109(b)(2); 20 U.S.C. 2309.)

(c) Will give at least fifteen (15) work days written notice of the disapproval of a plan or disapproval of the method by which the State is administering the plan; and

(Implements Sec. 109(c); 20 U.S.C. 2309.)

(d) Will hold the hearing within the State.

(Sec. 109(b)(1); 20 U.S.C. 2309.)

HEARINGS BEFORE THE COMMISSIONER ON AGENCY OR COUNCIL CHALLENGES TO THE FIVE-YEAR STATE PLAN OR THE ANNUAL PROGRAM PLAN

§ 104.281 Opportunity for a hearing.

(a) Sections 107 and 108 of the Act require the Commissioner to provide an opportunity for a hearing to certain agencies and councils which may be dissatisfied with any final decision of the State board with respect to the proposed five-year State plan or the annual program plan filed with the Commissioner.

(b) The agencies and councils which may request a hearing are those agencies and councils set forth in § 104.162 (a) through (d), and (h) through (j)). A representative of an agency or council may not request a hearing in his or her individual capacity.

(Secs. 107(a), 108(a); 20 U.S.C. 2307; 2308.)

(c) An agency or council may appeal to the Commissioner only:

(1) Matters which the agency or council has recommended to the State board for inclusion in the five-year State plan or annual program plan which the State board has not accepted (§ 104.164); or

(2) The State board's failure to follow the section 107 and section 108 process as to that agency or council.

(Interprets Sec. 107(a), 108(a), 20 U.S.C. 2307, 2308.)

§ 104.282 Appeal to the Commissioner.

(a) If a hearing is to be requested, the notice of appeal shall be in writing, addressed to the Commissioner and to the State board, and mailed by registered mail no later than fifteen (15) work days after the notification in writing has been received by the agency or council that the recommendations of the agency or council have been disapproved by the State board.

(b) Pending resolution of the matter for which a hearing has been requested, the five-year State plan or annual program plan submitted by the State board, if in substantially approvable form, may be conditionally approved by the Commissioner and may be conditionally deemed the operative plan.

(Implements Secs. 107(a), 108(a); 20 U.S.C. 2307, 2308.)

§ 104.283 Hearing.

(a) The Commissioner may delegate authority to an employee of the Office of Education to be the hearing officer. The hearing officer shall take testimony, consider the arguments of the parties, make findings of fact, make conclusions of law, and make recommendations to the Commissioner.

(b) The hearing officer shall give each party at least fifteen (15) work days notice of the time, place, and purpose of the hearing.

(c) The fifteen (15) work days notice of time and place of the hearing may be reduced or waived if all parties agree.

(d) The hearing may take place in Washington, D.C., or within the State whose agency or council is appealing, at the option of the requesting party and with the hearing officer's approval.

(e) The hearing officer may adjourn the hearing to a more satisfactory time or place on the motion of the hearing officer or on motion of a party.

(f) A record shall be kept of the hearing. The record may be taken by shorthand, stenotype, or mechanical or electrical means, and shall be transcribed.

(Implements Sec. 107(a)(1); 20 U.S.C. 2307.)

§ 104.284 Prehearing.

(a) The hearing officer may require a prehearing conference.

(b) The prehearing conference shall be conducted in an informal manner for the purpose of:

- (1) Simplification of the issues;
- (2) Exchange of documents;
- (3) Stipulation of facts;
- (4) Deciding on procedures at the hearing; and
- (5) Such other matters as may properly be dealt with to aid in expediting the orderly conduct or disposition of the hearing.

(Implements Sec. 107(a)(1); 20 U.S.C. 2307.)

§ 104.285 Right to counsel, witnesses, cross examination.

(a) The parties shall have the right to be represented by counsel.

(b) The parties may offer evidence by witnesses appearing in person.

(c) Where a witness appears in person, the other party shall have the right to cross examine the witness.

(d) If a witness is unable to appear in person, documentary evidence or affidavits may be accepted in lieu of personal appearance. Affidavits shall be given only the probative value of a sworn statement which has not been subjected to cross examination.

(Implements Sec. 107(a)(1); 20 U.S.C. 2307.)

§ 104.286 Evidence and standard of evidence.

(a) Formal rules of evidence do not apply. The hearing officer shall restrict the admission of evidence to that which is material and relevant.

(b) The hearing officer may request additional evidence.

(c) Findings of fact shall be supported by substantial evidence. "Substantial evidence," for the purpose of this hearing, means such relevant evidence as a rea-

sonable mind might accept to support a conclusion. (305 U.S. 197, 229 (1938).)

(Implements Sec. 107(a)(1); 20 U.S.C. 2307.)

§ 104.287 Determinations to be made by the hearing officer.

(a) The hearing officer shall determine, with reference to the matters subject to appeal (§ 104.218(c));

(1) Whether the procedural requirements of the Act have been fulfilled;

(2) Whether the decisions of the State board as set forth in the five-year State plan or the annual program plan are in accordance with the law;

(3) Whether the decisions of the State board in the five-year State plan or the annual program plan are based on substantial evidence; and

(4) Whether the State board's decisions in the five-year State plan or the annual program plan best carry out the purposes of the Act.

(Sec. 107(a)(1); 20 U.S.C. 2307.)

(b) Where the hearing officer decides that the State board has conformed with the provisions of paragraphs (a), (1), (2), and (3) of this section the hearing officer shall issue findings of fact to that effect.

(c) Where the hearing officer decides that the five-year State plan or the annual program plan will best carry out the purposes of the Act, the hearing officer shall recommend a finding for the State board.

(d) Where the hearing officer decides that the State board has not conformed with the provisions of paragraphs (a) (1), (2), and (3) of this Section or that the five-year State plan or the annual program plan will not best carry out the purposes of the Act, the hearing officer shall recommend that the plan not be approved.

(Implements Sec. 107(a)(1); 20 U.S.C. 2307.)

§ 104.288 Commissioner's decision.

(a) The findings of fact and recommendation of the hearing officer shall be conveyed to the parties and to the Commissioner.

(b) The findings and recommendation of the hearing officer shall become the findings and decision of the Commissioner unless the Commissioner reverses the hearing officer's findings or recommendation, in whole or in part, within fifteen (15) work days after the date the hearing officer conveys his or her findings and recommendation to the Commissioner.

(Implements Sec. 107(a)(1); 20 U.S.C. 2307.)

(c) The Commissioner may not unilaterally change a five-year State plan or annual program plan. The Commissioner shall approve a plan or disapprove a plan in its entirety and return it to the State board for revision.

(Implements Sec. 107(a)(1); 20 U.S.C. 2307; Conf. Rept. No. 94-1701, pp. 216, 217.)

§ 101.289 Appeal by State board, or agency to the court of appeals.

A State board, or agency dissatisfied with a final action of the Commissioner

under section 107(a)(1) of the Act may appeal to the United States court of appeals for the circuit in which the State is located in accordance with the procedure specified in section 434(d)(2) of GEPA.

(Implements Sec. 107(a)(1); 20 U.S.C. 1232c.)

SUSPENSION AND TERMINATION OF PAYMENTS FOR NONCOMPLIANCE

§ 104.291 Suspension and termination of payments for noncompliance.

Suspension and termination of payments for noncompliance shall be in accordance with section 434(c) of GEPA. Section 434(c) of GEPA reads as follows:

(c) Whenever the Commissioner, after reasonable notice and an opportunity for hearing, finds that there has been failure, by any recipient of funds under any applicable program, to comply substantially with terms to which such recipient has agreed in order to receive such funds, the Commissioner shall notify such recipient that further payments will not be made to such recipient under that program until he is satisfied that such recipient no longer fails to comply with such terms. Until the Commissioner is so satisfied, no further payments shall be made to such recipient. Pending the outcome of any termination proceeding initiated under this paragraph, the Commissioner may suspend payments to such recipient, after such recipient has been given reasonable notice and opportunity to show cause why such action should not be taken.

(Sec. 109(f)(1); 20 U.S.C. 2309., 1232c.)

APPEAL TO THE COURTS

§ 104.292 Appeal by State board on withholding of approval of State plan.

A State board which is dissatisfied with the final action of the Commissioner after an appeal to the Commissioner on withholding of approval of a State plan may appeal to the appropriate United States court of appeals as provided in section 109(d) of the Act.

(Sec. 109(d); 20 U.S.C. 2309.)

§ 104.293 Appeal by eligible recipients to the court of appeals.

An eligible recipient dissatisfied with the final action of the State board (or other appropriate State administrative agency) with respect to approval of an application by such eligible recipient for a grant under this Act may appeal to the appropriate United States court of appeals as provided in section 109(e) of the Act.

(Sec. 109(e); 20 U.S.C. 2309.)

FISCAL REQUIREMENTS

FEDERAL SHARE

§ 104.301 Application of Federal requirements.

(a) Federal vocational education funds shall be used solely to carry out the purposes of the Vocational Education Act and the regulations in this part. All expenditures of Federal funds are subject to the conditions and requirements of the Act and regulations.

(Interprets Sec. 111(a); 20 U.S.C. 2311.)

(b) Federal funds shall be used to share only in expenditures which are made in accordance with: (1) Assurances of the general application; (2) Five-year State plan; and (3) Annual program plan.

(Interprets Sec. 111(a); 20 U.S.C. 2311.)

(c) State and local funds which are applied to the matching requirements and maintenance of efforts requirements of the Act are subject to the conditions and requirements of the Act, regulations, and five-year State plan and annual program plan. This means that every program or activity supported in whole or in part by State or local funds which are used to match Federal funds must meet the same conditions and requirements as those supported by Federal funds.

(Interprets Sec. 111(a); 20 U.S.C. 2311; 20 U.S.C. 19.)

(d) Only actual expenditures of State and local funds shall be accepted as part of the State's matching and maintenance of effort requirements. This means that in-kind contributions shall not be used as part of the State's matching and maintenance of effort requirements. Requirements of 45 CFR 100b.92(b) of GEPR shall not apply to this program.

(Interprets Sec. 111(a); 20 U.S.C. 2311, 20 U.S.C. 19.)

§ 104.302 Federal share of expenditures—annual program plan.

(a) The Commissioner will pay to each State from the funds available under Section 102(a) an amount not to exceed 50 percent of the cost of carrying out its annual program plan.

(b) The State's matching share of expenditures under the annual program plan may be on a state-wide basis.

(c) Except for the fiscal requirements for the national priority programs described in § 104.303, State administration described in § 104.306, and local administration described in § 104.307, it is not necessary that Federal funds be matched by non-Federal funds for each purpose and program under the Act.

(Interprets Sec. 111(a); 20 U.S.C. 2311.)

§ 104.303 Federal share of expenditures—national priority programs.

(a) The Commissioner will pay to each State an amount not to exceed 50 percent of the excess cost (i.e., costs of special educational and related services above the costs for non-handicapped students) of programs, services, and activities under the basic grant in subpart 2 and program improvement and supportive services in subpart 3 for handicapped persons.

(b) The Commissioner will pay to each State an amount not to exceed 50 percent of:

(1) The excess cost (i.e., costs of special educational and related services above the costs for non-disadvantaged persons) of programs, services, and ac-

tivities under the basic grant in subpart 2 and program improvement and supportive services in subpart 3 for disadvantaged persons (other than handicapped persons);

(2) The excess cost (i.e., costs of special education and related services above the costs for persons who are not classified as persons of "limited English-speaking ability") of programs, services, and activities under the basic grant in subpart 2 and program improvement and supportive services in subpart 3 for persons who have limited English-speaking ability; and

(3) Stipends for students entering or already enrolled in vocational education programs who have acute economic needs which cannot be met under work-study programs.

(c) The Commissioner will pay to each State an amount not to exceed 50 percent of the cost of programs, services, and activities under the basic grant in subpart 2 and program improvement and supportive services in subpart 3 for:

(1) Postsecondary programs for: (i) Persons who have completed or left high school; (ii) who are enrolled in organized programs of study for which credit is given toward and associate or other degree; and (iii) who are not enrolled in programs designed as baccalaureate or higher degree programs; and

(2) Adult programs for: (i) Persons who have already entered the labor market; (ii) persons who are unemployed;

or (iii) persons who have completed or left high school and who are enrolled in organized programs of study for which credit is not given toward an associate or other degree.

(Sec. 110; 20 U.S.C. 2310.)

§ 104.304 Allowable expenditures for vocational education for national priority programs.

A State shall use the funds allotted for national priority programs under section 110 of the Act only for expenditures which are attributable to vocational education programs, services, and activities described in § 104.303.

(Section 110; 20 U.S.C. 2310; 45 CFR 100, App. B, Part II.)

§ 104.305 Federal share of expenditures—100 percent payments.

(a) The Commissioner will pay to each State an amount up to 100 percent of the cost of:

(1) Cooperative vocational education programs which include students enrolled in nonprofit private schools pursuant to section 122(f) of the Act;

(2) Exemplary and innovative programs which include students enrolled in nonprofit private schools pursuant to section 132(b) of the Act; and

(3) Special programs for disadvantaged persons in areas of the State which have high concentrations of youth unemployment or school dropouts under section 140 of the Act.

(b) The Commissioner will pay to the Trust Territory of the Pacific Islands, the Northern Mariana Islands, Guam,

the Virgin Islands, and American Samoa up to 100 percent of the cost of carrying out all programs listed in §§ 104.302 and 104.303.

(Sec. 111(a)(1); 20 U.S.C. 2311.)

§ 104.306 Federal share of expenditures—State administration.

(a) The Commissioner will pay, from the funds allotted pursuant to section 102(a) of the Act, up to 50 percent of the cost of administration of the five-year State plan and annual program plan, except as indicated in paragraphs (b) and (c).

(Sec. 111(a)(2)(B); 20 U.S.C. 2311.)

(b) The Federal share of the cost of administration of the five-year State plan and annual program plan in fiscal year 1978 is up to 80 percent and in fiscal year 1979 is up to 60 percent.

(Sec. 111(a)(2)(B); 20 U.S.C. 2311.)

(c) The Federal share of the cost of administration of the five-year State plan and annual program plan in fiscal year 1978 may be in excess of 80 percent under the following conditions:

(1) State and local expenditures for vocational education in a State for the latest fiscal year for which reliable data are available preceding fiscal year 1978 exceed the Federal expenditures for vocational education in that State by ten times. For example, if the Federal allocation in fiscal year 1977 is \$2 million, the aggregate of State and local expenditures must be greater than \$20 million; and

(2) The Commissioner determines that the costs of administration of the five-year State plan and annual program plan in fiscal year 1977 were necessary for the proper and efficient performance of the State's duties under the Act; and

(3) The Commissioner determines that the 80 percent ceiling on the Federal share of the cost of administration is insufficient to meet the needs of the State.

(d) The State shall use the following computation in determining its expenditure of Federal funds under paragraph (a) for administration of the five-year plan and annual program plan:

(1) not more than 80 percent of the total amount used for State administration shall be made from the basic grant in subpart 2;

(2) not more than 20 percent of the total amount used for State administration shall be made from program improvement and supportive services in subpart 3.

(e) The computation in paragraph (d) of this section does not require the State to use administrative funds in an 80/20 ratio between subpart 2 and subpart 3 activities. The State may use its administrative funds in whatever distribution best meets its needs.

(Interprets Sec. 111(a)(2)(B); 20 U.S.C. 2311.)

§ 104.307 Federal share of expenditures—local administration.

(a) The Commissioner will pay, from the funds allotted pursuant to section 102(a) of the Act, a part of the costs of supervision and administration of vocational education programs carried out by an eligible recipient.

(b) The eligible recipient shall use either the method set forth in subparagraph (1) or subparagraph (2) of this paragraph in determining the payment of local administrative costs.

(1) The percentage of Federal funds used by an eligible recipient for the costs of supervision and administration of vocational education programs may be no greater than the percentage of Federal funds used to support the total vocational education program carried out by the eligible recipient. For example, the total cost of the vocational education program of the eligible recipient is \$100,000 and the Federal contribution to this eligible recipient is \$25,000, or 25 percent of the total. If local administrative costs are \$10,000, then up to 25 percent of this amount, or \$2,500, may be charged against the Federal funds.

(2) Up to 50 percent of the cost of supervision and administration of the vocational education program of the eligible recipient may be charged to the Federal funds: *Provided*, That State funds match the Federal funds dollar for dollar. State funds used to match Federal funds shall be specifically made available for the purpose of local administration. For example, if the total cost of local administration is \$10,000, then up to \$5,000 may be charged to the Federal funds as long as the State contributes the same amount from a specific State appropriation.

(c) The State shall use the following computation in determining the amount of Federal funds available for the costs of local supervision and administration:

(1) Not more than 80 percent of the total amount used for supervision and administration by eligible recipients shall be made from the basic grant in subpart 2.

(2) Not more than 20 percent of the total amount used for supervision and administration by eligible recipients shall be made from program improvement and supportive services in subpart 3.

(d) The computation in paragraph (c) of this section does not require the State to use administrative funds in an 80/20 ratio between subpart 2 and subpart 3 activities. The State may use its administrative funds in whatever proportion best meets its needs.

(Interprets Sec. 111(a); 20 U.S.C. 2311.)

MINIMUM PERCENTAGES

§ 104.311 Percentage requirements with respect to State distribution of Federal funds.

The minimum percentages set forth in §§ 104.312, 104.313, and 104.314 are applicable to each State's allotment under section 102(a) of the Act.

(Interprets Sec. 110(a); 20 U.S.C. 2310.)

§ 104.312 Minimum percentage for the handicapped.

The State shall expend at least 10 percent of the allotment under section 102(a) of the Act for vocational education for handicapped persons as described in § 104.303(a). The State shall use these funds to the maximum extent possible to assist handicapped persons to participate in regular vocational education programs.

(Sec. 110(a); 20 U.S.C. 2310.)

§ 104.313 Minimum percentage for the disadvantaged.

(a) The State shall expend at least 20 percent of the section 102(a) allotment, subject to the conditions of paragraph (b), for the following purposes:

(1) Vocational education for disadvantaged persons (other than handicapped persons) as described in § 104.303(b)(1);

(2) Vocational education for persons who have limited English-speaking ability as described in § 104.303(b)(2); and

(3) Stipends for students entering or already enrolled in vocational education programs who have acute economic needs which cannot be met under work-study programs.

(Sec. 110(b); 20 U.S.C. 2310.)

(b) The State shall use, to the maximum extent possible, the funds expended for disadvantaged persons and persons of limited English-speaking ability to enable these persons to participate in regular vocational education programs.

(Sec. 110(d); 20 U.S.C. 2310.)

(c) The State shall use the following formula in determining its expenditures of funds under paragraph (a) of this section for vocational education for persons who have limited English-speaking ability:

(1) First determine the amount of Federal funds reserved for the purposes of paragraph (a) of this section;

(2) Determine the population having limited English-speaking ability who are between the ages of 15 and 24 inclusively;

(3) Determine the total population of the State aged 15 to 24 inclusively;

(4) Divide step two by step three;

(5) Multiply the quotient from step four by the total amount reserved for paragraph (a) of this section as indicated in step one;

(6) Expend at least this amount for vocational education for persons having limited English-speaking ability. The amount expended for this purpose shall not exceed the total amount reserved for paragraph (a) of this section.

For example, a State reserves \$500,000 for the purposes of paragraph (a) of this section. The State determines its limited English-speaking population between the ages of 15 and 24 is 10,000. The total population of the State aged 15 to 24 is 200,000. 10,000 is divided by 200,000 and the quotient is .05. \$500,000 is multiplied by .05 and the product is \$25,000. Accord-

ingly, the State expends at least \$25,000 for vocational education for persons who have limited-English speaking ability, but no more than \$500,000.

(Implements Sec. 110(b)(2); 20 U.S.C. 2310.)

§ 104.314 Minimum percentage for postsecondary and adult.

The State shall expend at least 15 percent of the section 102(a) allotment for vocational education for:

(a) Postsecondary programs for: (1) Persons who have completed or left high school; (2) Who are enrolled in organized programs of study for which credit is given toward an associate or other degree; and (3) Who are not enrolled in programs designed as baccalaureate or higher degree programs; and

(b) Adult programs for: (1) Persons who have already entered the labor market; (2) Persons who are unemployed; or (3) Persons who have completed or left high school and who are enrolled in organized programs of study for which credit is not given toward an associate or other degree.

(Sec. 110(c); 20 U.S.C. 2310.)

§ 104.315 Expenditures for programs in secondary schools.

(a) The State shall expend from its allotment for the basic grant (subpart 2) approximately the same amount of Federal funds for programs in secondary schools during fiscal years 1978 and 1979 as it had expended during fiscal years 1975 and 1976.

(b) The State shall set forth in the five-year State plan its justification for the need to shift funds in the event the projected Federal expenditures for programs in secondary schools, in either fiscal year 1978 or 1979 are not within 95 percent of the amount of Federal funds expended for programs in secondary schools during fiscal years 1975 and 1976.

(Interprets Sec. 107(b)(3)(A); 20 U.S.C. 2307.)

MAINTENANCE OF EFFORT

§ 104.321 Maintenance of fiscal effort at the State level.

A State shall maintain its fiscal effort on either a per student basis or on an aggregate basis for vocational education compared to the amount expended in the previous year.

(Sec. 111(b)(1); 20 U.S.C. 2311.)

§ 104.322 Withholding of payments.

The Commissioner will not make any payments to a State in a fiscal year unless the Commissioner finds that the fiscal effort of the State for vocational education on a per student basis or on an aggregate basis in the previous fiscal year was not less than the fiscal effort of the State on a per student basis or on an aggregate basis in the second preceding fiscal year.

(Sec. 111(b)(1); 20 U.S.C. 2311.)

§ 104.323 Five percent rule.

Total State fiscal effort for vocational education in the preceding fiscal year

shall not be considered reduced from the fiscal year effort of the second preceding fiscal year unless the per student expenditure or aggregate expenditure in the preceding year is less than that in the second preceding fiscal year by more than five percent. For example, a State which expends an aggregate of \$10 million for vocational education in one fiscal year and an aggregate of \$9,600,000 in the succeeding fiscal year will not be considered to have reduced fiscal effort for the purposes of the Vocational Education Act.

(Interprets Sec. 111(b)(1); 20 U.S.C. 2311.)

§ 104.324 Unusual circumstance rule.

Any reduction in fiscal effort for any fiscal year by more than five percent will disqualify the State from receiving Federal funds unless the State is able to demonstrate to the satisfaction of the Commissioner the following:

(a) In the preceding fiscal year, the reduction was occasioned by unusual circumstances that could not have been fully anticipated or reasonably compensated for by the State. Unusual circumstances may include unforeseen decreases in revenues due to the decline of the tax base;

(b) In the second preceding fiscal year, contributions of large sums of monies from outside sources were made; or

(c) In the second preceding fiscal year, large amounts of funds were expended for long-term purposes such as construction and acquisition of school facilities or the acquisition of capital equipment.

(Interprets Sec. 111(b)(1); 20 U.S.C. 2311.)

§ 104.325 Maintenance of fiscal effort at the local level.

A local educational agency shall maintain its fiscal effort on either a per student basis or on an aggregate basis for vocational education compared with the amount expended in the previous fiscal year.

(Sec. 111(b)(1); 20 U.S.C. 2311.)

§ 104.326 Withholding of payments.

A State shall not make payment under this Act to a local educational agency unless the State finds that the combined fiscal effort of the State and local educational agency on a per student basis or on an aggregate basis of the local educational agency and the State, was not less than the combined fiscal effort in the second preceding fiscal year.

(Sec. 111(b)(1); 20 U.S.C. 2311.)

§ 104.327 Exceptions.

The 5 percent rule applicable to the State in § 104.323 and the unusual circumstances rule in § 104.324 are also applicable to local educational agencies.

(Interprets Sec. 111(b)(1); 20 U.S.C. 2311.)

§ 104.328 Maintenance of fiscal effort by postsecondary educational institutions.

A postsecondary educational institution shall maintain its fiscal effort on

either a per student basis or on an aggregate basis for vocational education compared with the amount expended in the previous fiscal year.

(Sec. 111(b)(2); 20 U.S.C. 2311.)

§ 104.329 Withholding of payments.

A State shall not make any payment under this Act to a postsecondary educational institution unless the State finds that the fiscal effort on a per student basis or on an aggregate basis of that institution, with respect to the provision of vocational education, was not less than the fiscal effort of that institution in the second preceding fiscal year.

(Sec. 111(b)(2); 20 U.S.C. 2311.)

§ 104.330 Exceptions.

The 5 percent rule applicable to the State in § 104.323 and the unusual circumstances rule in § 104.324 are also applicable to postsecondary educational institutions.

(Interprets Sec. 111(b)(2); 20 U.S.C. 2311.)

STATE EVALUATION

§ 104.401 Purpose.

The State evaluations are to be used to assist local educational agencies and other recipients of funds in operating the best possible programs of vocational education and to improve the State's programs of vocational education.

(Sec. 112(b)(1); 20 U.S.C. 2312.)

§ 104.402 Evaluation by State board.

The State board shall, during the five-year period of the State plan, evaluate in quantitative terms the effectiveness of each formally organized program or project supported by Federal, State, and local funds. These evaluations shall be in terms of: (a) Planning and operational processes, such as:

- (1) Quality and availability of instructional offerings;
- (2) Guidance, counseling, and placement and follow-up services;
- (3) Capacity and condition of facilities and equipment;
- (4) Employer participation in cooperative programs of vocational education;
- (5) Teacher/pupil ratios; and
- (6) Teacher qualifications.

(b) Results of student achievement as measured, for example, by:

- (1) Standard occupational proficiency measures;
- (2) Criterion referenced tests; and
- (3) Other examinations of students' skills, knowledge, attitudes, and readiness for entering employment successfully.

(c) Results of student employment success as measured, for example, by:

- (1) Rates of employment and unemployment;
- (2) Wage rates;
- (3) Duration of employment; and
- (4) Employer satisfaction with performance of vocational education students as compared with performance of persons who have not had vocational education.

(d) The results of additional services, as measured by the suggested criteria un-

der paragraphs (a), (b), and (c) of this section, that the State provides under the Act to these special populations:

- (1) Women;
- (2) Members of minority groups;
- (3) Handicapped persons;
- (4) Disadvantaged persons; and
- (5) Persons of limited English-speaking ability.

(Implements Sec. 112(b) (1); 20 U.S.C. 2312.)

§ 104.403 Use of results of evaluation.

(a) The results of the evaluation shall be used as a basis to revise and improve the programs conducted under the approved five-year State plan.

(b) The State board shall make the results of the evaluations readily available to the State advisory council on vocational education.

(Sec. 112(b) (1) (A); 20 U.S.C. 2312.)

§ 104.404 Special data on completers and leavers.

(a) The State shall evaluate, using wherever possible statistically valid sampling techniques, the effectiveness of each program of vocational education which purports to teach entry-level job skills.

(b) The State shall evaluate each of these programs in order to ascertain the extent to which both those students who complete a program and those students who leave before completing a program:

- (1) Find employment in occupations related to their training; and
- (2) Are considered by their employers to be well-trained and prepared for employment.

(Sec. 112(b) (1) (B); 20 U.S.C. 2312.)

(c) The State shall use the following definitions for "program completer" and "program leaver":

(1) "Program completer" means a student who finishes a planned sequence of courses, services, or activities designed to meet an occupational objective and which purports to teach entry-level job skills; and

(2) "Program leaver" means a student who has been enrolled in and has attended a program of vocational education (which is part of a planned sequence of courses, services or activities designed to meet an occupational objective and which purports to teach entry-level job skills) and has left the program without completing it, except that no student shall be counted as a program leaver who is still enrolled in another program of vocational education. The term "program leaver" includes:

(i) Persons who leave the program voluntarily before its formal completion because they have acquired sufficient entry-level job skills to work in the field, and who have taken a job related to their field of training; and

(ii) All other leavers.

(d) For the purposes of this section, a State shall report separately on program completers and program leavers in accordance with the survey instructions and sampling standards to be provided by the National Center for Educational Statistics, HEW, as follows:

(1) Those who secure employment in the occupation for which they were trained or in occupations related to their vocational training, including the military;

(2) Those in paragraph (d) (1) of this section considered by their employers to be well trained and prepared for employment;

(Secs. 112(b) (1) (B), 161(a) (3) (B); 20 U.S.C. 2312, 2391.)

(3) Those who are enrolled for additional education and training; and

(4) Those in none of the above categories.

(Implements Secs. 112(b) (1) (B), 161(a) (3) (B); 20 U.S.C. 2312, 2391.)

(e) Persons who are enrolled for additional education and training shall not be counted as "leavers" in the evaluation data.

(Secs. 112(b) (1) (B), 161(a) (3) (B); 20 U.S.C. 2312, 2391.)

(f) The evaluation data on completers and leavers shall be collected at a date to be specified by the National Center for Educational Statistics, HEW.

(Implements Secs. 112(b) (1) (B), 161(a) (3) (B); 20 U.S.C. 2312, 2391.)

§ 104.405 Assurance of compatible data.

In order to assure that the data on program completers and leavers are compatible and can be aggregated and reported for all of the States, each State shall utilize in its data collection and reporting the information elements and uniform definitions which are developed for the national vocational education data reporting and accounting system, as required by section 161 of the Act.

(Sec. 161(a) (3) (B); 20 U.S.C. 2391.)

Subpart 2—Basic Grant

GENERAL PURPOSES

§ 104.501 Authorization of grants.

A State shall use its basic grant, which is equal to 80 percent of the funds allotted pursuant to section 102(a) of the Act, for the purposes set forth in § 104.502.

(Secs. 103(e), 120(a); 20 U.S.C. 2303, 2330.)

§ 104.502 Use of funds under the basic grant.

(a) The State shall expend not less than \$50,000 for each fiscal year from the funds available under the basic grant (section 120 of the Act) for the support of full-time personnel to perform the functions set forth in §§ 104.71 through 104.76.

(Sec. 104(b), 120(b) (1) (F); 20 U.S.C. 2304, 2330.)

(b) The State shall expend not less than an amount of funds it deems necessary for each fiscal year from the funds available under the basic grant (section 120 of the Act) for special programs and placement services which are tailored to meet the needs of the group identified in § 104.621. The scope of these vocational education programs is described in

§ 104.622.

(Sec. 107(b) (4) (B); 20 U.S.C. 2307.)

(c) The State may use the balance of the funds available under the basic grant (section 120 of the Act), in accordance with the approved five-year State plan and annual program plan, for any of the following purposes:

(1) Vocational education programs, described in § 104.511;

(2) Work-study programs, described in § 104.521;

(3) Cooperative vocational education programs, described in § 104.531;

(4) Energy education programs, described in § 104.541;

(5) Construction of area vocational education school facilities, described in § 104.551;

(6) Provision of stipends, described in § 104.571;

(7) Placement services for students who have successfully completed vocational education programs, described in § 104.581;

(8) Industrial arts programs, described in § 104.591;

(9) Support services for women, described in § 104.611;

(10) Day care services for children of students in secondary and postsecondary vocational education programs, described in § 104.611; and

(11) Construction and operation of residential vocational schools, described in § 104.631.

(12) Provision of vocational training through arrangements with private vocational training institutions or other existing institutions capable of carrying out vocational education programs, described in § 104.514;

(13) State administration of the five-year State plan and annual program plan, described in § 104.306; and

(14) Local supervision and administration of vocational education programs, services, and activities, described in § 104.307.

(Sec. 120(b); 20 U.S.C. 2330.)

VOCATIONAL EDUCATION PROGRAMS

§ 104.511 Use of funds.

(a) A State may use funds under its basic grant (section 120 of the Act) for vocational education programs which are described in its approved five-year State plan and annual program plan.

(b) Vocational education programs mean "organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation (upgrading and retraining) for a career requiring other than a baccalaureate or advanced degree, and, for the purpose of this paragraph, the term 'organized education program' means only instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training, and the acquisition, maintenance, and repair of instructional supplies, teaching aids, and equipment, and the term 'vocational education' does not mean the

construction, acquisition or initial equipment of buildings, or the acquisition of rental of land."

(Secs. 120(b)(1)(A), 195(1); 20 U.S.C. 2330, 2461.)

§ 104.512 Vocational instruction.

(a) For the purposes of these regulations, vocational instruction means instruction which is designed upon its completion to prepare individuals for employment in a specific occupation or a cluster of closely related occupations in an occupational field, and which is especially and particularly suited to the needs of those engaged in or preparing to engage in such occupation or occupations.

(b) Vocational instruction may include:

- (1) Classroom instruction;
- (2) Shop, laboratory, and classroom related field work;

(3) Programs providing occupational work experience, and related instructional aspects of apprenticeship programs subject to the provisions of § 104.515;

(4) Remedial programs which are designed to enable individuals, including persons of limited-English speaking ability, to profit from instruction related to the occupation or occupations for which they are being trained by correcting whatever educational deficiencies or handicaps prevent them from benefiting from such instruction; and

(5) Activities of vocational student organizations which are an integral part of the vocational instruction, subject to the provisions in § 104.513.

(c) Vocational instruction may be provided to either:

(1) Those preparing to enter an occupation upon the completion of the instruction; or

(2) Those who have already entered an occupation but desire to upgrade or update their occupational skills and knowledge in order to achieve stability or advancement in employment.

(Implements Sec. 120(b)(1)(A); 20 U.S.C. 2330.)

§ 104.513 Activities of vocational education student organizations.

(a) A State may use funds under its basic grant to support activities of vocational education student organizations which are described in its approved five-year State plan and annual program plan and which are:

(1) An integral part of the vocational instruction offered;

(2) Supervised by vocational education personnel who are qualified in the occupational area which the student organization represents; and

(3) Available to all students in the instructional program without regard to membership in any student organization.

(b) An integral part of vocational instruction includes:

(1) Training in an organized educational program which is directly related to the preparation of individuals for paid or unpaid employment in a career requiring other than a baccalaureate or higher degree; or

(2) Field or laboratory work incident to the vocational training; or

(3) Development and acquisition of instructional materials, supplies, and equipment for instructional services.

(c) An integral part of vocational instruction does not include:

(1) Lodging, feeding, conveying, or furnishing transportation to conventions or other forms of social assemblage;

(2) Purchase of supplies, jackets, and other effects for students' personal ownership;

(3) Cost of non-instructional activities such as athletic, social, or recreational events;

(4) Printing and disseminating non-instructional newsletters;

(5) Purchase of awards for recognition of students, advisors, and other individuals; or

(6) Payment of membership dues.

(Implements Sec. 120(b)(1); 20 U.S.C. 2330; 31 U.S.C. 551.)

§ 104.514 Vocational instruction under contract.

(a) A State may make provision for any portion of the program of instruction on an individual or group basis by private (for profit or non-profit) vocational training institutions (subject to the requirements of paragraph (c) of this section) or other existing institutions capable of carrying out vocational programs through a written contract with the State board or local educational agency. The contract shall describe the portion of instruction to be provided by the institution and incorporate the standards and requirements of vocational instruction set forth in the regulations in this subpart and the approved five-year State plan.

(b) The contract for instruction shall be entered into only upon a determination by the State board or local educational agency that:

(1) The contract is in accordance with State and local law; and

(2) The instruction to be provided under contract will be conducted as a part of the vocational education program of the State and will constitute a reasonable and prudent use of funds available under the approved five-year State plan.

(c) The State board or local educational agency may make arrangements with private (for profit or non-profit) vocational training institutions for the provision of vocational education where the State board or local educational agency determines:

(1) The private vocational training institution can make a significant contribution to attaining the objectives of the five-year State plan and can provide substantially equivalent training at a lesser cost; or

(2) The private vocational training institution can provide equipment or services not available in public institutions.

(d) The State board or local educational agency shall review the contracts with the institutions at least once a year.

(Implements Sec. 120(b)(1)(A); 20 U.S.C. 2330; Sen. Rept. 94-882, p. 67.)

§ 104.515 Apprenticeship programs.

The five-year State plan may provide for related instruction for apprentices who are employed to learn skilled trades. If such programs of instruction are offered, the plan must set forth the following assurances:

(a) The vocational training is supplemental to the on-the-job training experience of the apprentice.

(b) The worker involved in the apprenticeable occupation must be at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law.

(c) The apprentice training agreement must specify a given length of planned work experience training through employment on the job which is supplemented by related instruction.

(d) The skilled trade must possess all of the following characteristics:

(1) It is customarily learned in a practical way through training and work on the job;

(2) It is clearly identified and commonly recognized throughout an industry;

(3) It involves manual, mechanical, technical skills and knowledge; and

(4) It provides equal access to both sexes.

(e) Apprentices will be classified as follows:

(i) Registered. (i) Where the program or the apprentice, or both, are registered under the apprenticeship law of the State in which the apprentice is employed;

(ii) Where the program or the apprentice, or both, are registered by a State apprenticeship agency operating under powers vested in it by legally responsible State authority; and

(iii) Where the program or the apprentice, or both, are registered by the Bureau of Apprenticeship and Training, U.S. Department of Labor, under "standards" or "fundamentals" approved by the Federal Committee on Apprenticeship. Such registration or recognition exists only where neither conditions in paragraph (e)(1)(i) nor paragraph (e)(1)(ii) of this section exist.

(2) Non-registered. Where the program or the apprentice, or both, are not registered under any of the three conditions in paragraphs (e)(1)(i) (ii) and (iii) of this section, but a noncertifiable apprenticeship program is conducted under an implied or written agreement between the apprentice and an individual employer, a group of employees, employer-employee committees, or a governmental agency.

(3) The standards of apprenticeship programs must adhere to the requirements outlined in 29 CFR Part 29 (Department of Labor Apprenticeship Programs).

(29 U.S.C. 50)

WORK-STUDY PROGRAMS

§ 104.521 Use of funds.

A State may use funds under its basic grant (section 120 of the Act) for approved work-study programs, which are described in its approved five-year State plan and annual program plan.

(Sec. 120(b)(1)(B); 20 U.S.C. 2330.)

§ 104.522 Policy and procedure for work-study programs.

A State conducting work-study programs under § 104.521 shall set forth in the approved five-year State plan:

(a) An assurance that the State will adopt policies and procedures to insure that Federal funds used for this purpose will be expended solely for the payment or compensation of students employed pursuant to work-study programs which meet the requirements of § 104.523; and

(b) The principles for determining the priority to be accorded applications from local educational agencies for work-study programs. These principles shall give preference to applications submitted by local educational agencies serving communities having substantial numbers of youths who have dropped out of school or who are unemployed. Work-study programs shall be funded in the order determined by the application of these principles.

(Sec. 120(b)(1)(B), 121(b); 20 U.S.C. 2330, 2331.)

§ 104.523 Requirements of work-study programs.

(a) Work-study programs shall be administered by the local educational agency and shall be made reasonably available (to the extent of available funds) to all youths in the area served by the agency who are able to meet the requirements of paragraph (b) of this section.

(b) Work-study programs shall be furnished only to a student who:

(1) Has been accepted for enrollment as a full-time student in a vocational education program which meets the standards prescribed by the State board and the local educational agency for vocational education programs assisted under this Act, or in the case of a student already enrolled in such a program, is in good standing and in full-time attendance;

(2) Is in need of the earnings from such employment to commence or continue the student's vocational education program; and

(3) Is at least 15 years of age and less than 21 years of age at the commencement of the student's employment, and is capable, in the opinion of the appropriate school authorities, of maintaining good standing in his or her vocational education program while employed under the work-study program.

(Sec. 121; 20 U.S.C. 2331.)

(c) No student shall be employed under a work-study program for more than 20 hours in any week in which classes in which the student is enrolled are in session.

(Implements Sec. 121(a)(3); 20 U.S.C. 2331.)

(d) No student employed under a work-study program shall be compensated at a rate which exceeds the hourly rate prevailing in the area for persons performing similar duties.

(e) Employment under these work-study programs shall be for the local educational agency or for some other public or nonprofit private agency or institution. Students employed in work-study programs assisted under the authority of this section shall not be reason of this employment be deemed employees of the United States, or their service Federal service, for any reason.

(f) In each fiscal year during which the work study program remains in effect, the local educational agency shall expend (from sources other than payments from Federal funds under this section) for the employment of its students (whether or not the employment is an area eligible for assistance under this section) an amount that is not less than its average annual expenditure for work-study programs of a similar character during the three fiscal years preceding the fiscal year in which its work-study program is approved.

(Sec. 121; 20 U.S.C. 2330, 2331.)

COOPERATIVE VOCATIONAL EDUCATION PROGRAMS

§ 104.531 Use of funds.

(a) A State may use funds under its basic grant (section 120 of the Act) for grants to local educational agencies for establishing or expanding cooperative vocational education programs with the participation of public and private employers, when these programs are generally described in the approved five-year State plan and the annual program plan.

(b) The State, in its review of local applications, shall give priority for funding cooperative vocational education programs to local educational agencies in areas that have high rates of school dropouts or youth unemployment.

(Sec. 122 (a), (e); 20 U.S.C. 2332.)

§ 104.532 Assurances in five-year State plan.

A State conducting cooperative vocational education programs under § 104.531 shall provide assurances in the approved five-year State plan that:

(a) Funds will be used only for developing and operating cooperative vocational education programs as defined in Appendix A and which provide training opportunities that may not otherwise be available and which are designed to serve persons who can benefit from these programs;

(b) Necessary procedures are established for cooperation with employment agencies, labor groups, employers, and other community agencies in identifying suitable jobs for persons who enroll in cooperative vocational education programs;

(c) Provision is made, where necessary, for reimbursement of added costs

to employers for on-the-job training of students enrolled in cooperative programs, provided that the on-the-job training is related to existing career opportunities susceptible of promotion and advancement and which do not displace other workers who perform the work;

(Sec. 122; 20 U.S.C. 2332)

(d) The program provides cooperative on-the-job training that (1) employs and compensates student-learners in conformity with Federal, State, and local laws and regulations and in a manner not resulting in exploitation of the student-learner for private gain, and (2) is conducted in accordance with written training agreements between local educational agencies and employers;

(Implements Sec. 122(c); 20 U.S.C. 2332.)

(e) Procedures are developed and published for use by local educational agencies for providing ancillary services and activities to assure that quality in cooperative vocational education programs is provided for and may include pre-service and in-service training for teacher coordinators, supervision, curriculum materials, travel for students and coordinators necessary to the success of such programs, and evaluation; and

(f) Policies and procedures will be adopted for accounting, for continuous evaluation of cooperative vocational education programs, and for follow-up of students who have completed or left these programs.

(Sec. 122; 20 U.S.C. 2332.)

§ 104.533 Students in nonprofit private schools.

(a) A State using funds under its basic grant (Section 120 of the Act) for grants to local educational agencies for cooperative vocational education programs shall consult with the appropriate nonprofit private schools.

(b) Each local educational agency receiving funds from the State for cooperative vocational education programs shall:

(1) Identify the students enrolled in nonprofit private schools in the area served by the local educational agency whose educational needs are of the type which the cooperative vocational education programs and services may benefit; and

(2) Assess adequately the needs of the students identified in subparagraph (1) of this paragraph for the cooperative vocational education programs and services being offered; and

(3) Provide the students identified in subparagraph (1) of this paragraph with the opportunity for cooperative vocational education programs and services in a manner which will most effectively meet the needs of these students.

(c) The personnel, materials and equipment necessary to provide cooperative vocational education programs and services to nonprofit private school students shall remain under the administration, direction and control of the local educational agency.

(d) Cooperative vocational education programs carried out by local educational agencies which include students enrolled in nonprofit private schools may be supported up to 100 percent with Federal funds.

(e) Federal funds used to support cooperative vocational education programs which include students enrolled in nonprofit private schools will not be commingled with State or local funds so as to lose their identity. In developing policies and procedures, it shall not be necessary to require separate bank accounts for funds from Federal sources, so long as accounting methods will be established which assure that expenditures of the funds can be separately identified.

(Implements Sec. 122(f); H. Rept. 1085, p 46; 20 U.S.C. 2332.)

ENERGY EDUCATION

§ 104.541 Use of funds.

A State may use funds under its basic grant (section 120 of the Act), when included in the approved five-year State plan and annual program plan, for grants to postsecondary institutions for energy education.

(Sec. 123; 20 U.S.C. 2333.)

§ 104.542 Applications by postsecondary educational institutions.

(a) A State shall make a grant to a postsecondary educational institution only on application by the postsecondary educational institution to the State.

(b) The application shall describe with particularity a program for the training of miners, supervisors, and technicians (particularly safety personnel), and environmentalists in the field of coal mining and coal mining technology, including provision for supplementary demonstration projects or short-term seminars, which program may include curriculums such as:

- (1) Extraction, preparation, and transportation of coals;
- (2) Reclamation of coal mined land;
- (3) Strengthening of health and safety programs for coal mine employees;
- (4) Disposal of coal mine wastes; and
- (5) Chemical and physical analysis of coal and materials, such as water and soil, that are involved in the coal mining process.

(c) Postsecondary educational institutions may use funds for the acquisition of equipment necessary for the conduct of these programs.

(Sec. 123(a)(1)(2) (A) through (E); 20 U.S.C. 2333.)

§ 104.543 Solar energy.

A State may also use funds under its basic grant (section 120 of the Act) to make grants to postsecondary educational institutions to carry out energy education programs for:

(a) Training of individuals needed for the installation of solar energy equipment; and

(b) Training necessary for the installation of: (1) Glass paneled solar collectors; (2) Wind energy generators; and

(3) Other related applications of solar energy.

(Sec. 123(b); 20 U.S.C. 2333.)

CONSTRUCTION OF AREA VOCATIONAL EDUCATION SCHOOL FACILITIES

§ 104.551 Use of funds.

A State may use funds under its basic grant (section 120 of the Act) to pay costs of constructing area vocational education school facilities, in accordance with the approved five-year State plan and annual program plan.

(Sec. 120(b)(1)(E); 20 U.S.C. 2330.)

§ 104.552 Types of facilities.

The State may use funds under the basic grant for construction if the facility meets one of the following requirements:

(a) A specialized high school used exclusively or principally for the provision of vocational education to persons who are available for study in preparation for entering the labor market; or

(b) The department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to persons who are available for study in preparation for entering the labor market; or

(c) A technical or vocational school used exclusively or principally for the provision of vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market; or

(d) The department or division of a junior college or community college or university operating under the policies of the State board which provides vocational education in no less than five different occupational fields, leading to immediate employment but not necessarily leading to a baccalaureate degree. These vocational education programs must:

(1) Be available to all residents of the State or an area of the State designated and approved by the State board; and

(2) In the case of a school, department, or division described in (c) or (d), admit as regular students both persons who have completed high school and persons who have left high school.

(Sec. 195(2); 20 U.S.C. 2461.)

§ 104.553 Construction requirements.

An area vocational education school facility constructed under provisions of §§ 104.551 and 104.552 must meet the requirements of (a) non-discrimination provisions in 45 CFR Part 80. This includes 45 CFR 80.3(b)(3) which provides that, in determining the site or location of the facility, a recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the grounds of race, color, or national origin, Subpart K—"Construction Requirements" in the General Education Provisions Regulations, 45 CFR 100b.155 through 100b.192, and (c) the Architectural Barriers Act

of 1968, 42 U.S.C. 4151, pertaining to standards for design, construction and alteration of buildings.

(Sec. 120(b)(1)(E); 20 U.S.C. 2330; 45 CFR 100b.157 through 100b.192 42 U.S.C. 4151)

PROVISION OF STIPENDS

§ 104.571 Use of funds.

A State may use funds under its basic grant (section 120 of the Act), when included in the approved five-year State plan and annual program plan, for the provision of stipends for students entering or already enrolled in vocational education programs if these students have acute economic needs which cannot be met under work-study programs, subject to the restrictions in § 104.572.

(Sec. 120(b)(1)(G); 20 U.S.C. 2330.)

§ 104.572 Restrictions on payment of stipends.

No funds shall be used for the payment of stipends to students entering or already enrolled in programs of vocational education unless the State board first makes a specific finding in each instance of funding that the funding of this particular activity is necessary due to:

(a) Inadequate funding in other programs providing similar activities; or

(b) Other services in the area that are inadequate to meet the needs.

(Sec. 120(b)(1)(G); 20 U.S.C. 2330.)

§ 104.573 Application for payment of stipends by eligible recipients.

An eligible recipient desiring to provide stipends for eligible students under §§ 104.571 and 104.572 shall include a request for funds in the application submitted to the State board and shall provide in the application an assurance that each applicant to be approved meets the requirements of §§ 104.571 and 104.572.

(Sec. 120(b)(1)(G); 20 U.S.C. 2330.)

§ 104.574 Rates for stipends.

Students entering or already enrolled in vocational education programs may be paid stipends at a rate not to exceed the higher of:

(a) The minimum wage prescribed by State or local law multiplied by the number of hours per week the student is enrolled in the vocational education program; or

(b) The minimum hourly wage set out under 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, multiplied by the number of hours per week the student is enrolled in the vocational education program.

(Implements Sec. 120(b)(1)(G); 29 CFR 95.34(c); 20 U.S.C. 2330.)

PLACEMENT SERVICES FOR STUDENTS WHO HAVE SUCCESSFULLY COMPLETED VOCATIONAL EDUCATION PROGRAMS

§ 104.581 Use of funds.

A State may use funds under its basic grant (section 120 of the Act), in accordance with the approved five-year State plan and annual program plan, for providing placement services for students

who have successfully completed vocational education programs, subject to restrictions in § 104.582.

(Sec. 120(b)(1)(H); 20 U.S.C. 2330.)

§ 104.582 Restrictions on placement services.

A State shall not use funds for placement services for students who have successfully completed vocational education programs, unless the State board first makes a specific finding in each instance of funding that the funding of this particular activity is necessary due to:

(a) Inadequate funding in other programs providing similar activities; or

(b) Other services in the area that are inadequate to meet the needs. For example, if insufficient funds are available under Section 134(a)(3) for the placement of students successfully completing vocational education programs, the State may use funds under the basic grant for this purpose.

(Sec. 120(b)(2); 20 U.S.C. 2330.)

§ 104.583 Application for funds by eligible recipients.

An eligible recipient desiring to provide placement services to students who have successfully completed vocational education programs under § 104.581 shall:

(a) Include the request for funds in the local application submitted to the State board; and

(b) Provide assurances that all placement services to be provided meet the requirements of § 104.582.

(Sec. 120(b)(1)(H); 20 U.S.C. 2330.)

INDUSTRIAL ARTS

§ 104.591 Use of funds.

A State may use funds under its basic grant (section 120 of the Act), when included in the approved five-year State plan and annual program plan, for industrial arts programs which meet the requirements set forth in § 104.592.

(Sec. 120(b)(1)(I); 20 U.S.C. 2330.)

§ 104.592 Industrial arts programs.

Industrial arts education programs which may be funded under § 104.591 are those industrial arts programs which are designed to meet the purposes of this Act (including the elimination of sex stereotyping) and which:

(a) Pertain to the body of related subject matter, or related courses, organized for the development of understanding about all aspects of industry and technology, including learning experiences involving activities such as experimenting, designating, constructing, evaluating, and using tools, machines, materials, and processes; and

(b) Assist individuals in making informed and meaningful occupational choices or which prepare them for entry into advanced trade and industrial or technical education programs.

(Sec. 195(15); 20 U.S.C. 2461.)

SUPPORT SERVICES FOR WOMEN

§ 104.601 Use of funds.

A State may use funds under its basic grant (section 120 of the Act), when included in its approved five-year State plan and annual program plan, for support services for women who enter vocational education programs designed to prepare individuals for employment in jobs which have been traditionally limited to men.

(Sec. 120(b)(1)(J); 20 U.S.C. 2330.)

§ 104.602 Types of support services.

Support services to be provided under § 104.601 include:

(a) *Counseling.* Counseling women entering and enrolled in non-traditional programs on the nature of these programs and on the ways of overcoming the difficulties which may be encountered by women in these programs. Counselors may furnish supportive services to assist students in adjusting to the new employment requirements.

(Implements Sec. 120(b)(1)(J); 20 U.S.C. 2330.)

(b) *Job development.* Programs and activities in the area of job development include the provision of materials and information concerning the world of work which present women students entering, enrolled in, or interested in non-traditional programs the options, opportunities, and range of jobs available in these nontraditional fields. Job development support services may also be carried out through bringing persons employed in these nontraditional fields into the schools, as well as providing opportunities for women students to visit the work place of business and industry so as to afford them a clear understanding of the nature of the work, including an understanding of the work setting in which these jobs are performed.

(Implements Sec. 120(b)(1)(J); 20 U.S.C. 2330; H.R. Rept. No. 94-1085, pp. 23-25.)

(c) *Job follow-up support.* Support services may be provided to assist women students in finding employment relevant to their training and interests. Follow-up services may be provided to assist students in the work force, and dealing with barriers which women face in working in these nontraditional areas.

(Implements Sec. 120(b)(1)(J); 20 U.S.C. 2330.)

§ 104.603 Support to increase number of women instructors.

In funding programs and activities of support services for women, funds may be used to increase the number of women instructors involved in the training of individuals in programs which have traditionally enrolled mostly males, so as to provide supportive examples for these women who are preparing for jobs

in these nontraditional areas of employment.

(Implements Sec. 120(b)(1)(J); 20 U.S.C. 2330; H.R. Rept. No. 1085, p. 24.)

DAY CARE SERVICES FOR CHILDREN OF STUDENTS

§ 104.611 Use of funds.

A State may use funds under its basic grant (section 120 of the Act), when included in the approved five-year State plan and annual program plan, to provide day care services for children of students (both male and female and including single parents) in secondary and postsecondary vocational education programs.

(Sec. 120(b)(1)(K); 20 U.S.C. 2330.)

§ 104.612 Day care services.

(a) Day care services shall be for the purpose of providing appropriate care and protection of infants, pre-school and school-age children in order to afford students who are parents the opportunity to participate in vocational education programs.

(b) The day care services provided under this section shall be governed by the Federal Interagency Day Care Requirements (45 CFR Part 71).

(Implements Sec. 120(b)(1)(K); 20 U.S.C. 2330.)

VOCATIONAL EDUCATION PROGRAMS FOR DISPLACED HOMEMAKERS AND OTHER SPECIAL GROUPS

§ 104.621 Use of funds.

A State shall use funds under its basic grant (section 120 of the Act) in accordance with its approved five-year State plan and annual program plan to provide vocational education programs for the following special groups:

(a) Persons who had been homemakers but who now, because of dissolution of marriage, must seek employment;

(b) Persons who are single heads of households and who lack adequate job skills;

(c) Persons who are currently homemakers and part-time workers but who wish to secure a full-time job; and

(d) Women who are now in jobs which have been traditionally considered jobs for females and who wish to seek employment in job areas which have not been traditionally considered as job areas for females, and men who are now in jobs which have been traditionally considered jobs for males and who wish to seek employment in job areas which have not been traditionally considered as job areas for males.

(Secs. 107(b)(4)(B), 120(b)(1)(L); 20 U.S.C. 2307, 2330)

§ 104.622 Scope of programs.

The State shall fund programs, in accordance with the policies and procedures described in its approved five-year State plan pursuant to § 104.187(b), to

assess and meet the needs of the groups described in § 104.621. These programs shall include:

(a) Organized educational programs necessary to prepare these special groups for employment, including the acquisition, maintenance and repair of instructional equipment;

(b) Special courses preparing these individuals in how to seek employment; and

(c) Provision of placement service for the graduate of these programs.

(Implements Sec. 120(b)(1)(L); 20 U.S.C. 2330.)

CONSTRUCTION AND OPERATION OF RESIDENTIAL VOCATIONAL SCHOOLS

§ 104.631 Use of funds.

A State may use funds under its basic grant (section 120 of the Act) when included in its five-year State plan and annual program plan for the construction equipment, and operation of residential vocational schools, including room, board, and other necessities.

(Sec. 120(b)(1)(M); 20 U.S.C. 2330.)

§ 104.632 Residential vocational schools.

A residential vocational school is an institution which provides vocational education for youths (males and females) who are at least 15 years of age and less than 21 years of age at the time of enrollment, and who need full-time study on a residential basis in order to benefit fully from the education. For the purposes of this section, institutions to which juveniles are assigned as a result of their delinquent conduct are not residential vocational schools. (This does not prohibit States from using funds under section 120 of the Act for the provision of vocational education programs in correctional institutions.)

(Sec. 124; 20 U.S.C. 2334.)

§ 104.633 Special considerations for residential vocational schools.

(a) States shall give special consideration to the needs of large urban areas and isolated rural areas having substantial numbers of youths who have dropped out of school or who are unemployed.

(b) Funds may not be used for schools in which students are segregated because of race.

(Sec. 124(b); 20 U.S.C. 2334.)

§ 104.634 Construction requirements.

When Federal funds are used to pay part of the cost of constructing a residential vocational school, the facility must meet the requirements of § 104.553.

(Sec. 120(b)(1)(M); 20 U.S.C. 2330; 45 CFR 100b.157 through 100b.192.)

Subpart 3—Program Improvement and Supportive Services

§ 104.701 Authorization of grants.

A State shall use 20 percent of the funds allotted pursuant to section 102(a) of the Act for any of the following purposes, except as provided in § 104.762(a):

(a) Program improvement described in § 104.702;

(b) Vocational guidance and counseling described in § 104.761;

(c) Vocational education personnel training described in § 104.771;

(d) Grants to overcome sex bias and sex stereotyping described in § 104.791;

(e) State administration of the five-year State plan and annual program plan described in § 104.306; and

(f) Local supervision and administration of vocational education programs, services, and activities described in § 104.307.

(Secs. 103(e), 130; 20 U.S.C. 2303, 2350.)

PROGRAM IMPROVEMENT

§ 104.702 Purpose.

The purpose of program improvement is to improve vocational education by the support of research programs, exemplary and innovative programs, and curriculum development programs.

(Sec. 130; 20 U.S.C. 2350.)

§ 104.703 Research coordinating unit.

(a) In order to expend funds for program improvement, the State shall establish a research coordinating unit to coordinate the research, exemplary and innovative programs, and curriculum development activities in the State.

(b) The State shall set forth the organizational structure of this research coordinating unit in the five-year State plan.

(c) The State shall develop a comprehensive plan of program improvement which includes:

(1) The intended uses of funds available under section 130 of the Act to support activities of program improvement;

(2) A description of the State's priorities for program improvement; and

(3) The procedures to be used by the research coordinating unit to insure that the findings and results of the program improvement activities in the State are disseminated throughout the State in a coordinated fashion.

(d) The State shall include the comprehensive plan of program improvement in the five-year State plan and annual program plan.

(e) The research coordinating unit shall submit to the Commissioner and to the National Center for Research in Vocational Education the following:

(1) Two copies of an abstract of each approved project for program improvement, within 30 calendar days after approval of the project, containing the source and amount of funds obligated for the project; and

(2) Two copies of the final report resulting from the State project, within three months after the ending date of the project.

(f) The research coordinating unit may use funds available under section 130 of the Act for the purposes set forth in §§ 104.705, 104.706, and 104.708. This unit may contract for the performance of activities described in §§ 104.705, 104.706, and 104.708, or this unit may per-

form the activities set forth in § 104.705, using its own staff. The cost of the professional and support staff of the research coordinating unit is supportable with Federal funds available under section 130 of the Act.

(Implements Secs. 130, 131, 132, 133, 171; 20 U.S.C. 2350 through 2353, 2401; H.R. Rept. 94-1085, p. 44; H.R. Rept. 94-1701, pp. 225-226.)

§ 104.704 Contract requirements.

No contract shall be made pursuant to §§ 104.705, and 104.708 unless the applicant can demonstrate a reasonable probability that the contract will result in improved teaching techniques or curriculum materials that will be used in a substantial number of classrooms or other learning situations within five years after the termination date of such contracts.

(Sec. 131(b), 133(b); 20 U.S.C. 2351, 2353.)

§ 104.705 Use of funds for research programs.

A research coordinating unit may use funds available under section 130 of the Act directly or by contract for:

(a) Applied research and development in vocational education;

(b) Experimental, developmental, and pilot programs and projects designed to test the effectiveness of research findings, including programs and projects to overcome problems of sex bias and sex stereotyping;

(c) Improved curriculum materials for presently funded programs in vocational education and new curriculum materials for new and emerging job fields, including a review and revision of any curricula developed under this section to insure that such curricula do not reflect stereotypes based on sex, race, or national origin;

(d) Projects in the development of new careers and occupations, such as:

(1) Research and experimental projects designed to identify new careers in such fields as mental and physical health, crime prevention and correction, welfare, education, municipal services, child care, and recreation, requiring less training than professional positions, and to delineate within such career roles with the potential for advancement from one level to another;

(2) Training and development projects designed to demonstrate improved methods of securing the involvement, cooperation, and commitment of both the public and private sectors toward the end of achieving greater coordination and more effective implementation of programs for the employment of persons in the fields described in subparagraph (1) including programs to prepare professionals (including administrators) to work effectively with aides; and

(3) Projects to evaluate the operation of programs for the training, development, and utilization of public service aides particularly their effectiveness in providing satisfactory work experiences and in meeting public needs; and

(e) Dissemination of the results of the contracts made pursuant to paragraphs

(a) through (d), as well as the results of other research projects, including employment of persons to act as disseminators on a local level, of these results.

(Sec. 131(a); 20 U.S.C. 2351.)

§ 104.706 Use of funds for exemplary and innovative programs.

(a) The research coordinating unit may use funds available under section 130 of the Act directly or by contract for:

(1) Programs to develop high quality vocational education programs for urban centers with high concentrations of:

(i) Economically disadvantaged individuals;

(ii) Unskilled workers; and

(iii) Unemployed individuals.

(2) Programs to develop training opportunities for:

(i) Persons in sparsely populated rural areas; and

(ii) Individuals migrating from farms to urban areas.

(3) Programs of effective vocational education for persons of limited English-speaking ability;

(4) Establishment of cooperative arrangements between public education and manpower agencies, designed to correlate vocational education opportunities with current and projected needs of the labor market; and

(5) Programs designed to broaden occupational aspirations and opportunities for youth, especially for youth who have academic, socioeconomic, or other handicaps. These programs include:

(i) Programs and project to familiarize elementary and secondary students with the broad range of occupations for which special skills are required and the requisites for careers in those occupations; and

(ii) Programs and projects to facilitate the participation of employers and labor organizations in postsecondary vocational education.

(6) Dissemination of the results of these contracts made under the authority of paragraphs (a) through (e), including employment of persons to act as disseminators, on a local level, of these results.

(Sec. 132(a); 20 U.S.C. 2352.)

(b) Every contract made by a research coordinating unit for the purpose of funding exemplary and innovative projects shall:

(1) Give priority to programs and projects designed to reduce sex bias and sex stereotyping in vocational education;

(2) To the extent consistent with the number of students enrolled in private nonprofit schools in the area to be served, whose educational needs are of the type which the program is designed to meet, make provision (in accordance with the requirements set forth in § 104.533) for the participation of these students in the programs; and also

(3) Provide that the Federal funds made available for exemplary and innovative programs to accommodate students in nonprofit private schools will

not be commingled with State or local funds.

(Sec. 132(b); 20 U.S.C. 2352.)

§ 104.707 Disposition of exemplary and innovative programs.

The State shall indicate in the annual program plan and accountability report covering the final year of financial support by the State for any exemplary and innovative program:

(a) The proposed disposition of the program when Federal support ends; and

(b) The means by which successful or promising programs will be continued and expanded within the State.

(Sec. 132(c); 20 U.S.C. 2352.)

§ 104.708 Use of funds for curriculum development programs.

The research coordinating unit may use funds available under section 130 of the Act directly or by contract for:

(a) Development and dissemination of vocational education curriculum materials for new and changing occupational fields;

(b) Development and dissemination of vocational education curriculum materials for:

(1) Handicapped persons;

(2) Disadvantaged persons (other than handicapped persons);

(3) Persons of limited English-speaking ability;

(c) Development and dissemination of curriculum and guidance and testing materials designed to overcome sex bias and sex stereotyping in vocational educational programs;

(d) Support services designed to enable teachers to meet the needs of individuals enrolled in vocational education programs traditionally limited to members of the opposite sex; and

(e) Development and dissemination of other curriculum materials designed to improve the State's vocational education programs.

(Sec. 133(a); 20 U.S.C. 2353.)

VOCATIONAL GUIDANCE AND COUNSELING

§ 104.761 Purpose.

The purpose of vocational guidance and counseling assistance is to improve the State's vocational education programs by providing support for vocational development guidance and counseling programs, services, and activities.

(Secs. 130(b)(4), 134(a); 20 U.S.C. 2350, 2354.)

§ 104.762 Conformity with five-year State plan.

(a) A State shall use not less than 20 percent of the Federal funds available under section 130 of the Act to support vocational development guidance and counseling programs, services, and activities.

(b) The expenditure of funds for this purpose shall be in accordance with the approved five-year State plan and annual program plan.

(Sec. 134; 20 U.S.C. 2354; Sen. Rept. 94-882, p. 80.)

§ 104.763 Kinds of programs, services, and activities.

Funds made available to a State under the vocational guidance and counseling program (section 134 of the Act) shall be used to support one or more of the following activities:

Guidance and counseling.

(a) Initiation, implementation, and improvement of high quality vocational guidance and counseling programs and activities;

(b) Vocational counseling for children, youth, and adults, leading to a greater understanding of educational and vocational options;

(c) Provision of educational and job placement programs and follow-up services for students in vocational education and for individuals preparing for professional occupations or occupations requiring a baccalaureate or higher degree. Follow-up services provided to baccalaureate or higher degree students shall be only for students enrolled on or after October 1, 1977;

(d) Vocational guidance and counseling training designed to acquaint guidance counselors with (1) the changing work patterns of women, (2) ways of effectively overcoming occupational sex stereotyping, and (3) ways of assisting girls and women in selecting careers solely on their occupational needs and interests, and to develop improved career counseling materials which are free;

(e) Vocational and educational counseling for youth offenders and adults in correctional institutions;

(f) Vocational guidance and counseling for persons of limited English-speaking ability;

(g) Establishment of vocational resource centers to meet the special needs of out-of-school individuals, including individuals seeking second careers, individuals entering the job market late in life, handicapped individuals, individuals from economically depressed communities or areas, and early retirees; and

(h) Leadership for vocational guidance and exploration programs at the local level.

(Implements Sec. 134(a); 20 U.S.C. 2354; Sen. Rept. No. 95-142.)

§ 104.764 Special emphasis.

Recipients of funds allocated by the State for programs, services, and activities listed in § 104.763 (a) or (b) shall use those funds, insofar as is practicable:

(a) To bring individuals with experience in business and industry, the professions, and other occupational pursuits into schools as counselors or advisors for students;

(b) To bring students into the work establishments of business and industry, the professions, and other occupations to acquaint students with the nature of work accomplished therein; and

(Sec. 134(b); 20 U.S.C. 2354.)

(c) To enable guidance counselors to obtain experience in business and industry, the professions, and other occupational pursuits which will better enable those counselors to carry out their guidance and counseling duties.

(Sec. 134(b); 20 U.S.C. 2354; Conf. Rept. No. 94-1701, p. 225.)

VOCATIONAL EDUCATION PERSONNEL TRAINING

§ 104.771 Purpose.

The purpose of vocational education personnel training is to improve the State's vocational education programs and the services which support those programs by improving the qualifications of persons serving or preparing to serve in vocational education programs.

(Sec. 135(a); 20 U.S.C. 2355.)

§ 104.772 Conformity with five-year State plan.

(a) The State may use funds available under section 130 of the Act to support vocational education personnel training programs.

(Sec. 135(a); 20 U.S.C. 2355.)

(b) In order to be eligible for support under section 130 of the Act, specific programs and projects of training must be in accord with the general plan for vocational education personnel training as set forth in the approved five-year State plan and annual program plan for vocational education.

(Sec. 130(b); 20 U.S.C. 2350.)

§ 104.773 Eligible participants.

Training may be provided to persons serving or preparing to serve in vocational education programs, including teachers, administrators, supervisors, and vocational guidance and counseling personnel.

(Sec. 135(a); 20 U.S.C. 2355.)

§ 104.774 Types of training.

Funds available to the State under section 130 of the Act may be used to support programs and projects designed to improve the qualifications of persons who are eligible under § 104.773, including (but not limited to) the following:

(a) Training or retraining for teachers, and supervisors and trainers of teachers, in vocational education in new and emerging occupations;

(b) In-service training for vocational education teachers and other staff members, to improve the quality of instruction, supervision, and administration of vocational education programs, and to overcome sex bias and sex stereotyping in vocational education programs;

(c) Provisions for exchange of vocational education teachers and other personnel with skilled workers or supervisors in business, industry, and agriculture (including mutual arrangements for preserving employment and retirement status and other employment benefits during the period of exchange), and the development and operation of coopera-

tive programs involving periods of teaching in schools providing vocational education and of experience in commercial, industrial, or other public or private employment related to the subject matter taught in such schools;

(d) Training to prepare journeymen in the skilled trades or occupations for teaching positions;

(e) Training, including in-service training, for teachers and supervisors and trainers of teachers in vocational education to improve the quality of instruction, supervision and administration of vocational education for persons who are disadvantaged, or handicapped, or who are of limited English-speaking ability, and to train or retrain counseling and guidance personnel to meet the special needs of these persons;

(f) Provision of short-term or regular-session institutes designed to improve the qualifications of persons entering or reentering the field of vocational education in new and emerging occupational areas in which there is a need for such personnel.

(Sec. 135(a); 20 U.S.C. 2355.)

§ 104.775 Grants or contracts.

The State board may make grants or contracts, in accordance with its five-year State plan and annual program plan, in support of both training and retraining programs and projects to provide:

(a) Both pre-service and in-service education; and

(b) Both regular-session (academic year) institutes and short-term institutes.

(Sec. 135(a)(6), (b); 20 U.S.C. 2355.)

§ 104.776 Stipends to trainees.

Within the limits set in paragraphs (c) through (f) of this section, the State board may, at its discretion, authorize payment of:

(a) Stipends to participating trainees in programs or projects supported under section 135 of the Act; and

(b) Allowances for other expenses for such trainees and their dependents.

(Sec. 135(b); 20 U.S.C. 2355.)

(c) *Part-time and short-term training.* For part-time training and for short-term training (for periods not in excess of the equivalent of ten working days), the upper limits of stipends per participant are:

(1) Per hour of actual training, a sum not in excess of the average amount earned per hour of teaching by full-time classroom teachers in the State;

(2) Per full day of training, a sum not in excess of six times the rate per hour set in paragraph (c)(1) of this section; and

(3) Per five-day week of training, a sum not in excess of five times the rate per day set in paragraph (c)(2) of this section.

(d) *Full-time academic year or summer session.* The upper limits for stipends per participant for full-time training are:

(1) Per academic year of approximately nine months, a sum not in excess of \$4500; and

(2) Per summer session of at least six weeks, a sum not in excess of \$900.

(e) *Other periods of full-time training.* For full-time training for periods of more than the equivalent of ten full days and less than six weeks, the stipend is limited to a sum calculated at a rate proportionate to \$500 per calendar month.

(f) *Other allowances.* In addition to the sum allowable under authority of paragraphs (c), (d), and (e) of this section, the State may make payments only as follows:

(1) For the cost of participant travel to and from training sites, a participant is allowed the same per-mile rate for automobile travel as an employee of the State educational agency;

(2) For support of dependents of participants, a sum not in excess of:

(i) \$675 per dependent for each academic year of full-time training; and

(ii) \$170 per dependent for full-time training during a summer session of at least six weeks.

(Implements Sec. 135(b); 20 U.S.C. 2355.)

GRANTS TO OVERCOME SEX BIAS AND SEX STEREOTYPING

§ 104.791 Purpose.

The purpose of grants under § 104.792 is to support activities which show promise of overcoming sex bias and sex stereotyping in vocational education.

(Secs. 130(b)(6), 136; 20 U.S.C. 2350, 2356.)

§ 104.792 Conformity with five-year State plan.

(a) A State may use funds available under section 130 of the Act to support grants to overcome sex bias and sex stereotyping in vocational education programs.

(Sec. 136; 20 U.S.C. 2356.)

(b) The expenditure of funds for this purpose shall be in accordance with the approved five-year State plan and annual program plan. The plans shall describe the types of projects to be funded.

(Sec. 130(b); 20 U.S.C. 2350.)

§ 104.793 Types of projects.

Funds may be used for projects such as:

(a) Research projects on ways to overcome sex bias and sex stereotyping in vocational educational programs;

(b) Development of curriculum materials free of sex stereotyping;

(c) Development of criteria for use in determining whether curriculum materials are free from sex stereotyping.

(d) Examination of current curriculum materials to assure that they are free of sex stereotyping; and

(e) Training to acquaint guidance counselors, administrators, and teachers with ways of effectively overcoming sex bias and sex stereotyping, especially in assisting persons in selecting careers ac-

according to their interests and occupational needs rather than according to stereotypes.

(Implements Sec. 136; 20 U.S.C. 2356.)

Subpart 4—Special Programs for the Disadvantaged

§ 104.801 Grants to States for special programs for the disadvantaged.

A State shall use the funds allocated to it from the separate authorization (section 102(b) of the Act) for special programs for the disadvantaged as defined in § 104.804 and Appendix A of these regulations.

(Sec. 140; 20 U.S.C. 2370.)

§ 104.802 Use of funds.

(a) A State shall use the funds available under § 104.801, in accordance with the approved five-year State plan and annual program plan, for special programs of vocational education for disadvantaged persons in areas of high concentration of youth unemployment or school dropouts.

(b) A State shall use the funds under § 104.801 to pay up to 100 percent of the cost of special programs for disadvantaged persons.

(c) Funds available under § 104.801 may be used in addition to funds made available to the State for basic grants (section 120 of the Act): *Provided*, That the funds are used to conduct special programs of vocational education for the disadvantaged to enable them to succeed in vocational education programs.

(Sec. 140; 20 U.S.C. 2370.)

§ 104.803 Students in nonprofit private schools.

A State may grant funds to eligible recipients only if:

(a) Provision (in accordance with the requirements set forth in § 104.533) has been made for the participation of students enrolled in nonprofit private schools in the area to be served whose educational needs are of the type which the program or projects involved is to meet, to the extent consistent with the number of such students; and

(b) Effective policies and procedures have been adopted which assure that Federal funds made available under this subpart to accommodate students in nonprofit private schools will not be commingled with State or local funds.

(Sec. 140(b)(2); 20 U.S.C. 2370.)

§ 104.804 Criteria of need and eligibility.

(a) The term "disadvantaged" means persons (other than handicapped persons) who:

(1) Have academic or economic disadvantages; and

(2) Require special services, assistance, or programs in order to enable them to succeed in vocational education programs.

(Sec. 195(16); 20 U.S.C. 2461.)

(b) "Academic disadvantage," for the purposes of this definition of "disadvantaged," means that a person:

(1) Lacks reading and writing skills;

(2) Lacks mathematical skills; or

(3) Performs below grade level.

(c) "Economic disadvantage," for the purposes of this definition of "disadvantaged," means:

(1) Family income is at or below national poverty level;

(2) Participant or parent(s) or guardian of the participant is unemployed;

(3) Participant or parent of participant is recipient of public assistance; or

(4) Participant is institutionalized or under State guardianship.

(Implements Sec. 140; 20 U.S.C. 2370.)

(d) Eligibility for participation in the special programs supported under § 104.801 is limited to persons who (because of academic or economic disadvantage):

(1) Do not have, at the time of entrance into a vocational education program, the prerequisites for success in the program; or who

(2) Are enrolled in a vocational education program but require supportive services or special programs to enable them to meet the requirements for the program that are established by the State or the local educational agency.

(Implements Sec. 140; 20 U.S.C. 2370.)

Subpart 5—Consumer and Homemaking Education

§ 104.901 Grants to States for consumer and homemaking education.

A State shall use the funds allotted to it from the separate authorization (section 102(c) of the Act) for programs of consumer and homemaking education.

(Sec. 150(a); 20 U.S.C. 2380.)

§ 104.902 Use of funds.

A State shall use the funds available under section 150 of the Act, in accordance with its approved five-year State plan and annual program plan, solely for:

(a) Programs in consumer and homemaking; and

(b) Ancillary services in relation to programs under paragraph (a) of this section.

(Sec. 150(b); 20 U.S.C. 2380.)

§ 104.903 Programs in consumer and homemaking education.

(a) Programs in consumer and homemaking education may be conducted at all educational levels (elementary, secondary, postsecondary or adult).

(b) Programs in consumer and homemaking education consist of instructional programs, services, and activities for the occupation of homemaking.

(c) Programs for the occupation of homemaking include (but are not limited to):

(1) Consumer education;

(2) Food and nutrition;

(3) Family living and parenthood education;

(4) Child development and guidance;

(5) Housing and home management (including resource management); and

(6) Clothing and textiles.

(Sec. 150(b); 20 U.S.C. 2380.)

§ 104.904 Purpose of programs in consumer and homemaking education.

A State shall set forth in the five-year State plan and annual program plan the programs in consumer and homemaking education which it intends to support. Funds available under section 150 of the Act shall only be provided to support programs in consumer and homemaking education which:

(a) Encourage participation of both males and females to prepare for combining the roles of homemakers and wage earners;

(b) Encourage elimination of sex stereotyping by promoting the development of curriculum materials which deal with:

(1) Increased numbers of women working outside the home;

(2) Increased numbers of men assuming homemaking responsibilities;

(3) Changing career patterns of men and women; and

(4) Appropriate Federal and State laws relating to equal opportunity in education and employment;

(c) Give greater consideration to economic, social, and cultural conditions and needs, especially in economically depressed areas and, where appropriate, to bilingual instruction;

(d) Encourage eligible recipients to operate outreach programs in communities for youth and adults, giving consideration to their special needs, such as (but not limited to):

(1) The aged;

(2) Young children;

(3) School-age parents;

(4) Single parents;

(5) Handicapped persons;

(6) Educationally disadvantaged persons;

(7) Programs connected with health care delivery systems, such as providing parenthood education, nutrition education and consumer education; and

(8) Programs providing services for courts and correctional institutions, such as providing child development and guidance programs for short term court offenders;

(e) Prepare males and females who have entered or are preparing to enter into the work of the home; and

(f) Emphasize the following areas in order to meet current societal needs:

(1) Consumer education;

(2) Management of resources;

(3) Promotion of nutritional knowledge and food use; and

(4) Promotion of parenthood education.

(Sec. 150(b); 20 U.S.C. 2380.)

§ 104.905 Ancillary services.

A State may use funds available under section 150 of the Act to provide ancillary services, activities, and other means of assuring quality in all consumer and homemaking education programs. These ancillary services may include (but are not limited to): (a) Teacher training; (b) teacher supervision; (c) curriculum development; (d) research; (e) program evaluation; (f) special demonstration

and experimental programs; (g) development of instructional materials; (h) exemplary projects; (i) provision of equipment; (j) State administration and leadership; and (k) guidance and counseling.

(Implements sec. 150(b)(2); 20 U.S.C. 2380.)

§ 104.906 Federal share.

(a) A State shall use funds appropriated under section 102(c) of the Act for section 150 of the Act to pay up to 50 percent of the cost of (1) programs in consumer and homemaking education under §§ 104.903 and 104.904 and (2) ancillary services and activities under § 104.905.

(b) A State shall use at least one-third of the funds available as stated in paragraph (a) to pay up to 90 percent of the cost of programs in economically depressed areas or areas with high rates of unemployment for program designed to: (1) Assist consumers; (2) help improve home environments; and (3) help improve the quality of family life.

(Sec. 150(c), (d); 20 U.S.C. 2380.)

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GENERAL

§ 105.1 Scope.

Part 105 contains regulations interpreting or implementing Part B (entitled "National Programs") of Title I of the Vocational Education Act of 1963, as amended by section 202 of Title II of the Education Amendments of 1976, Pub. L. 94–482 (referred to as "the Act"). Part 105 also contains regulations interpreting or implementing the Commissioner's discretionary program of contracts with Indian tribes contained in section 103 (a) (1) (B) of the Act.

(Sec. 103(a)(1)(B); Secs. 171 through 195; 20 U.S.C. 2303, 2401 et seq.)

§ 105.2 Purpose.

The purpose of Part 105 is to set forth the regulations which govern the Commissioner's discretionary programs of grants and contracts for vocational education.

(Secs. 171 through 195; 20 U.S.C. 2401 et seq.)

§ 105.3 Definitions.

The definitions common to all parts of the Act are contained in section 195 of the Act. These definitions and additional definitions necessary for the State vocational education programs are set forth in Appendix A of Part 104. Definitions necessary only for Part 105 are set forth in this Part 105 in the subparts in which they apply.

(Sec. 195; 20 U.S.C. 2461.)

§ 105.4 Applicability of General Education Provisions Regulations.

Provisions in Parts 100 and 100a of the General Education Provisions Regulations (45 CFR Parts 100 and 100a), entitled "General Provisions for Office of Education Programs," are applicable to programs under this Part 105.

(45 CFR Parts 100, 100a.)

§ 105.5 Applicability of technical review criteria.

(a) The technical review criteria in § 105.110 for Program Improvement and in § 105.626 for Bilingual Vocational Instructional Materials, Methods, and Techniques Program apply to the review of applications submitted for grants only.

(b) The evaluation of proposals submitted for procurement contracts for the two programs identified in paragraph (a) of this section are made in accordance with the Federal Procurement Regulations, Title 41, Code of Federal Regulations, Chapters 1 and 3. Technical review criteria that are consistent with the Act will be developed for each procurement contract and will be set forth specifically in the Request for Proposal (RFP) for the particular contract. These criteria will be consistent with the Act and the regulations. The RFP will be announced in the Commerce Business Daily (CBD).

(45 CFR Chapters 1 and 3.)

Subpart 1—Program Improvement

§ 105.101 Purpose.

The purpose of program improvement is to support projects for the improvement of vocational education and a national center for research in vocational education as authorized in section 171 of the Act. Funds available to the Commissioner for program improvement under section 103 of the Act will be used primarily for contracts and in some cases for grants.

(Secs. 103, 171; 20 U.S.C. 2303, 2401.)

§ 105.102 National center for research in vocational education.

(a) The Commissioner will support a national center for research in vocational education. The center (a nonprofit agency) will be chosen once every five years. The Commissioner will appoint an advisory committee to assist the center. The center shall have such research locations, including contracts with one or more regional research centers, as shall be determined by the Commissioner after consultation with the national center and its advisory committee taking into consideration the vocational education research resources available, geographical area to be served, and the schools, programs, projects, and students and areas to be served by research activities.

(b) The center shall directly or through other public agencies:

- (1) Conduct applied research and development on problems of national significance in vocational education;
- (2) Provide leadership development through an advanced study center and in-service education activities for State and local leaders in vocational education;
- (3) Disseminate the results of research and development projects funded by the center;
- (4) Develop and provide information to facilitate national planning and policy development in vocational education;
- (5) Act as a clearinghouse for information on projects supported by the States and the Commissioner and compile an annotated bibliography of research, exemplary and innovative projects, and curriculum development projects assisted with funds made available under this Act since July 1, 1970; and
- (6) Work with States, local educational agencies, and other public agencies in developing methods of evaluating programs, including the follow-up studies of program completers and leavers required by section 112 of the Act, so that these agencies can offer job training programs which are more closely related to the types of jobs available in their communities, regions, and States.

(Sec. 171(a)(2); 20 U.S.C. 2401.)

§ 105.103 Armed services curriculum materials.

The Commissioner will make contracts to convert to use in local educational agencies, private nonprofit schools, and other public agencies curriculum materials

involving job preparation which have been prepared for use by the armed services of the United States.

(Sec. 171(b)(3); 20 U.S.C. 2401.)

§ 105.104 Authorized activities.

(a) The Commissioner will support projects of national significance for improvement of vocational education. The projects include the following activities as authorized in sections 131 through 136 of the Act:

- (1) Research (section 131 of the Act);
- (2) Exemplary and innovative programs (section 132 of the Act);
- (3) Curriculum development (section 133 of the Act);
- (4) Vocational guidance and counseling (section 134 of the Act);
- (5) Vocational education personnel training (section 135 of the Act); and
- (6) Grants to assist in overcoming sex bias and sex stereotyping (section 136 of the Act).

(b) Functions under the above may include: applied research and development; experimental and pilot programs; curriculum revision and development; demonstration, dissemination, and utilization of research and development products; personnel training; and evaluation.

(Secs. 131 through 136, 171(a)(1); 20 U.S.C. 2351-56, 2401.)

§ 105.105 Eligible applicants.

(a) Eligible applicants for project support include:

- (1) Public organizations, institutions, and agencies;
- (2) Nonprofit and profit-making private organizations, institutions, and agencies; and
- (3) Individuals.

(b) Profit-making private organizations, institutions, and agencies, and individuals are eligible for contracts only.

(c) Eligible applicants for the national center for research in vocational education include nonprofit agencies only.

(Interprets Sec. 171; 20 U.S.C. 2401.)

§ 105.106 Cost sharing.

No cost sharing is required. The Commissioner may pay all or part of the cost. (Interprets Sec. 171(b)(5)(A); 20 U.S.C. 2401.)

§ 105.107 Duration of project support.

The Commissioner will not support a project for a period to exceed three fiscal years.

(Sec. 171(b)(5)(B); 20 U.S.C. 2401.)

§ 105.108 Improved teaching techniques or curriculum materials.

The Commissioner will not make a grant pursuant to § 105.104 unless the applicant can demonstrate a reasonable probability that the grant will result in improved teaching techniques or curriculum materials that will be used in a substantial number of classrooms or other learning situations within five years after the termination date of the grant.

(Sec. 171(b)(1); 20 U.S.C. 2401.)

§ 105.109 Exemplary and innovative projects.

(a) The Commissioner will make a contract for an exemplary and innovative project only if the project provides for the participation of students enrolled in nonprofit private schools consistent with:

- (1) The number of such students in the area to be served by the project; and
- (2) The educational needs of those students is of the type which the project involved is to meet.

(b) The contract shall provide that the Federal funds will not be commingled with State or local funds.

(Sec. 171(b)(2); 20 U.S.C. 2401.)

§ 105.110 Technical review criteria.

The following criteria will be used in reviewing applications. These criteria are consistent with 45 CFR 100a.26, Review of Applications, in the General Provisions for Office of Education Programs. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criterion. The maximum score for the criteria is 100 points, and the maximum weight for each criterion is listed below. Applications that receive less than 50 points will not be funded.

(a) *National need.* (Maximum 15 points.) The need section clearly: (1) Describes the national need in vocational education for the proposed project; (2) Provides specific evidence of the need; (3) Indicates specifically who or what will be helped; and (4) Describes the problem rather than symptoms of the problem.

(b) *Literature review.* (Maximum 5 points.) The literature review is sufficiently comprehensive to:

- (1) Establish the basis for the problem;
- (2) Describe the problem in contrast to the symptoms of the problem;
- (3) Provide a strong conceptual framework for the proposed objectives and proposed plan, including the general design and specific procedures of the proposed plan, along with the management, evaluation, dissemination, and training procedures, when appropriate; and
- (4) Describe what has been done previously to alleviate the problem and point out the gaps that will be alleviated by this specific proposed work.

(c) *Objectives.* (Maximum 10 points.) The objectives are related to the problem and: (1) Are significant for vocational education; (2) Clearly describe proposed project outcomes; (3) Are capable of being attained; and (4) Are measurable.

(d) *Plan.* (Maximum 18 points.) The plan clearly describes: (1) The overall design for the proposed project; and (2) The specific procedures by which each objective will be accomplished. Normally the plan will include:

- (i) Precise definitions of terms; (ii) Description of the characteristics and number of subjects; (iii) Sampling procedures and control groups; (iv) Instru-

mentation; and (v) Statistical and analytical procedures.

(e) *Management plan.* (Maximum 8 points.) The management plan adequately describes the way in which personnel and resources will be used to accomplish each component of the plan developed in criterion (c).

(f) *Evaluation plan.* (Maximum 8 points.) The plan includes valid and reliable instruments and procedures for assessing and documenting the impact of project results and end products or outcomes in terms of the achievement of project goals and objectives.

(g) *Results, end products, outcomes, and dissemination.* (Maximum 10 points.) The application clearly describes:

(1) What will be delivered to the government; (2) The format in which the results, products, or outcomes will be delivered to the government;

(3) The way in which results, products, or outcomes will be developed or provided for dissemination purposes to specified user populations; and

(4) The procedures to be used in disseminating the results, end products, or outcomes at the local, State, and/or national levels.

(h) *Staff competencies and experience.* (Maximum 7 points.) The application clearly describes:

(1) The names and qualifications (including project management qualifications) of the project director, key professional staff, advisory groups, and consultants;

(2) Time commitments planned for the project by the project director, key staff, advisory groups, and consultants;

(3) Evidence of past and successful experience of the proposed project director and key staff members in similar or related projects;

(4) Use of professional staff members from minorities or women; and

(5) The competencies that are required for the proposed project.

(i) *Budget and cost effectiveness.* (Maximum 7 points.) The application provides a justifiable and itemized statement of cost which is substantiated by line items in the proposed budget and appears to be cost effective with respect to proposed results, products, or outcomes.

(j) *Institutional capability and commitment.* (Maximum 4 points.) The application provides adequate evidence of:

(1) Institutional or individual's experience and commitment to the proposed work;

(2) Appropriate facilities and equipment; and

(3) Assurance of support from cooperating agencies, local educational agencies, postsecondary institutions, business, industry, and labor, where applicable for successful implementation of the project.

(k) *Sex bias and stereotyping.* (Maximum 8 points.) The application provides appropriate plans to eliminate sex bias and stereotyping in the proposed results, end products, and outcomes, and the proposed dissemination plans.

(Implements Sec. 171; 20 U.S.C. 2401.)

§ 105.111 Additional application review factors.

In addition to the criteria listed in § 105.110, the Commissioner may utilize factors such as the following in making decisions regarding whether to fund applications: (a) Duplication of effort; (b) Duplication of funding; and (c) Evidence that an applicant has not performed satisfactorily on previous projects.

(Implements Sec. 171; 20 U.S.C. 2401.)

Subpart 2—Indian Tribes

CONTRACT PROGRAM FOR INDIAN TRIBES AND INDIAN ORGANIZATIONS

§ 105.201 Purpose.

The purpose of the program for Indian tribes and Indian organizations is for the Commissioner, at the request of an Indian tribe, to make a contract or contracts directly with Indian tribal organizations, with funds available under section 103(a)(1) of the Act, to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the Act, particularly section 103(a)(1)(B)(iii) of the Act.

(Sec. 103(a)(1); 20 U.S.C. 2303.)

§ 105.202 Applicability of the Indian Self-Determination Act of 1975.

(a) Any contract entered into under this subpart is subject to the provisions of sections 4, 5, 6, 7(b) and 102 of the "Indian Self-Determination and Education Assistance Act of 1975," Pub. L. 93-638.

(b) Regulations implementing the above sections of the Indian Self-Determination and Education Assistance Act, Title 25 of the Code of Federal Regulations, §§ 271.44, 271.46, 271.47, and 271.50 are applicable to the extent that they are relevant and practicable.

(c) Whenever the term "Secretary of the Interior" is used, in the Indian Self-Determination and Education Assistance Act, the term means, for the purposes of this subpart, "Commissioner of Education."

(Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450a, et seq.)

§ 105.203 Definitions.

(a) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(b) "Tribal organization" means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by the or-

ganization and which includes the maximum participation of Indians in all phases of its activities.

(25 U.S.C. 450b.)

§ 105.204 Assistance contracts.

Awards will be made competitively through assistance contracts governed by Subchapter A of Title 45, Code of Federal Regulations (entitled "General Provisions for Office of Education Programs"), except to the extent that appropriate sections of the Indian Self-Determination and Education Assistance Act of 1975 apply or to the extent that more specific regulations in this subpart apply. The criteria in 45 CFR 100a.26(b) do not apply to this program.

(Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450e(b).)

§ 105.205 Eligible applicants.

An Indian tribal organization of an Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act of 1975 or under the Act of April 16, 1934, is eligible for assistance contracts.

(Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450f.)

§ 105.206 Applications for assistance contracts.

An application from an eligible tribal organization must be submitted to the Commissioner by the Indian tribe and must contain the information that the Commissioner requires. An application which serves more than one Indian tribe shall be approved by each tribe to be served in the application.

(Sec. 103(a)(1)(B)(iii); Pub. L. 93-638; 20 U.S.C. 2303; 25 U.S.C. 450b(c).)

§ 105.207 Review for duplication of effort.

An applicant shall submit a copy of the application directly to the Commissioner of the Bureau of Indian Affairs and the State board at the same time it submits an application to the Office of Education in order to avoid duplication of funding.

(Implements Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303.)

§ 105.208 No cost sharing.

No cost sharing by the applicant is required.

(Implements Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303.)

§ 105.209 Duration of awards.

(a) The total project period of an award may not exceed three years. The Commissioner may make multi-year awards if the nature of the project warrants multi-year funding. Continuation funding is contingent upon satisfactory performance. Application for multi-year awards shall have a detailed budget for the current year and total budget figures for the subsequent years.

(b) A request for continuation of a project beyond the project period will

be considered a new application and will be reviewed competitively with all other applications. In order for the Commissioner to make this determination, an applicant who has had a prior contract under this program shall include an evaluation of the previous project.

(Implements Sec. 103(a)(1)(B)(III); 45 CFR 100a.432; 20 U.S.C. 2303.)

§ 105.210 Final reports.

The contractor shall submit final financial status and performance reports as the Commissioner shall request.

(45 CFR 100a.403; 45 CFR 100a.432; 20 U.S.C. 2303.)

§ 105.211 Technical review criteria.

The following criteria will be utilized in reviewing applications. These criteria are consistent with 45 CFR 100a.26(b), Review of Applications, in the General Provisions for Office of Education Programs. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criterion. The maximum aggregate score for the criteria is 100 points, and the maximum weight for each criterion is listed below in parentheses. Points will be awarded to the extent that evidence in the application satisfies each criterion. The review of these criteria shall constitute the basis for the Commissioner to enter or decline to enter into a contract with an eligible applicant. If the review of any application results in no recommendation to fund (where funds are available), this will mean that it is not satisfactory, as that term is used in the Indian Self-Determination Act (section 102). Applications must receive a minimum of 30 points to be considered for funding.

(25 U.S.C. 450f.)

(a) *Program improvement.* (Maximum 15 points.) The application focuses on the improvement of occupational training opportunities for Indians and delineates the way in which the proposed program will contribute to improved programs for the specific target group.

(b) *Need.* (Maximum 10 points.) The need section clearly: (1) Describes the need for the proposed activity; (2) Provides specific evidence of the need; (3) Indicates specifically how the need will be met; and (4) Describes, where appropriate, ongoing and planned activities in the community relative to the need.

(c) *Objectives.* (Maximum 10 points.) The objectives: (1) Relate to the need; (2) Are significant for vocational education; (3) Clearly describe proposed program outcomes;

(4) Are capable of being attained; and

(5) Are measurable.

(d) *Plan.* (Maximum 15 points.) The plan clearly describes the way in which the objectives will be accomplished by: (1) The overall design for the proposed program; and

(2) The use of specific procedures to implement activities designed to accomplish each objective of each segment of the proposed program;

(3) A description of: (i) Specific activities to be conducted in the proposed program;

(ii) Instruments to be used in the proposed program;

(iii) Instructional material to be used in the proposed program, if appropriate; and

(iv) Population to be served in the proposed program; and

(4) Statistical and analytical procedures, if appropriate.

(e) *Management plan.* (Maximum 10 points.) The management plan adequately describes the way in which personnel and resources will be utilized to accomplish each objective, the overall design, and each major procedure.

(f) *Evaluation plan.* (Maximum 10 points.) The plan includes valid and reliable instruments and procedures for assessing and documenting the impact of project results in terms of the achievement of project goals and objectives.

(g) *Applicant's staff competencies and experience.* (Maximum 10 points.) Points will be awarded on the extent to which the application clearly describes: (1) The competencies that are required for the proposed project;

(2) The names and qualifications (including project management qualifications) of the project director, key professional staff, advisory groups, and any consultants;

(3) Time commitments planned for the project by the project director, key staff, advisory groups, and any consultants;

(4) Evidence of past and successful experience of the proposed project director and key staff members in similar or related projects;

(5) Evidence of commitment to section 7(b) of the Indian Self-Determination and Education Assistance Act.

(h) *Budget and cost effectiveness.* (Maximum 10 points.) Points will be awarded on the extent to which the application provides a justifiable and itemized statement of cost which contains line items in the proposed budget and appears to be cost effective with respect to proposed results.

(i) *Institutional capability and commitment.* (Maximum 10 points.) The application provides adequate evidence of: (1) Institutional experience and commitment to the proposed work;

(2) Appropriate facilities and equipment; and

(3) Documented assurances of support from cooperating local educational agencies, postsecondary institutions, business, industry, or labor, if support from any of these groups is necessary for successful implementation of the project.

(Implements Sec. 103(a)(1)(B)(III); 20 U.S.C. 2303; 25 U.S.C. 450f.)

§ 105.212 Additional factors for declining to contract.

In addition to the weighted technical review criteria listed in § 105.211, the Commissioner may use any of the factors listed below in making a decision whether to decline to enter into a contract with an eligible applicant.

(a) The program duplicates an effort already being made;

(b) Funding the program would create an inequitable distribution among tribes; or

(c) The applicant has not performed satisfactorily under a previous Office of Education award.

(Implements Sec. 103(a)(1)(B)(III); 20 U.S.C. 2303; 25 U.S.C. 450f.)

§ 105.213 Hearing by the Commissioner after declining to enter into a contract.

After receiving notice from the Commissioner that the Office of Education will not award a contract to an eligible applicant, the tribal organization or the tribe shall have 30 calendar days to request a hearing, in writing, to review the Commissioner's decision.

(25 U.S.C. 450f.)

§ 105.214 Remaining funds.

From any remaining funds reserved for this subpart, the Commissioner is authorized to enter into an agreement with the Commissioner of the Bureau of Indian Affairs for the operation of vocational education programs authorized by this Act in institutions serving Indians as described in section 103(a)(B)(i) of the Act. The Secretary of the Interior is authorized to receive funds for that purpose.

(Sec. 103(a)(1)(B)(III); 20 U.S.C. 2303.)

Subpart 3—Training and Development Programs for Vocational Education Personnel

LEADERSHIP DEVELOPMENT AWARD PROGRAM

§ 105.301 Purpose.

The purpose of the leadership development award program is to provide opportunities for experienced vocational educators to spend full time in advanced study of vocational education.

(Sec. 172(a)(1); 20 U.S.C. 2402.)

§ 105.302 Leadership development awards.

(a) *Awards.* The Commissioner will make leadership development awards to qualified vocational education personnel (such as administrators, supervisors, teacher educators, researchers, guidance and counseling personnel, and instructors in vocational education) for graduate training in an approved vocational education leadership development program of an approved institution of higher education.

(Sec. 172(b)(1), (3); 20 U.S.C. 2402.)

(b) *Award period.* Leadership development awards will be made for a period not to exceed 36 months.

(Sec. 172(b)(2)(A); 20 U.S.C. 2402.)

§ 105.303 Equitable geographical distribution.

In order to meet the needs for qualified vocational educational personnel in all the States, the Commissioner, without using any pre-determined formula for allocation among the States, but after

applications have been reviewed and scored on their merits, will make leadership development awards in an equitable manner among the States. The Commissioner will take into account such factors as:

(a) The State's vocational education enrollments; and

(b) The incidence of youth unemployment and school dropouts in the State. (Sec. 172(b)(4); 20 U.S.C. 2402.)

§ 105.304 Eligibility of individuals.

(a) A person is eligible to receive a leadership development award if such person:

(1) Has had not less than two years of experience in vocational education or in business or industrial training or military technical training, or in the case of researchers, experience in social science research which is applicable to vocational education; and

(2) Is currently employed or is reasonably assured of employment in vocational education and has successfully completed, as a minimum, a baccalaureate degree program; and

(3) Is recommended by his or her employer, or others, as having leadership potential in the field of vocational education and is eligible for admission as a graduate student to a program of higher education approved by the Commissioner under § 105.311.

(b) In order to receive a leadership development award the person selected shall enroll for full-time graduate study in a vocational education leadership development program approved under § 105.311.

(Sec. 172(b)(1), (5); 20 U.S.C. 2402.)

§ 105.305 Application procedures.

(a) *Submission of applications.* Any eligible individual who wishes to receive a leadership development award shall submit an application to the Commissioner and send one copy of the application to the State board for vocational education for the State in which the applicant is a resident.

(b) *Role of the State board.* The State board, with advice from the State advisory council, from other agencies involved in State planning and reporting, and from representatives of vocational education programs in institutions of higher education, will:

(1) Review the application;

(2) Collect advice as to the merits of each application from the other agencies and the representatives noted in this paragraph;

(3) Advise the Commissioner as to the merits of each application; and

(4) Forward all applications and statements of advice to the Commissioner for review and decision by the Commissioner.

(Implements Sec. 172(a)(1); 20 U.S.C. 2402; H.R. Rept. No. 94-1085, pp. 54-55.)

§ 105.306 Stipends to individuals.

(a) *Academic year.* Each person awarded a leadership development award is entitled to receive a stipend of:

(1) \$4500 for each academic year of full-time study at the institution of higher education; and

(2) \$675 for each academic year for each dependent.

(b) *Summer session.* An additional stipend may be awarded of:

(1) \$900 for full-time summer study at the same institution of higher education; and

(2) \$170 for this period for each dependent.

(Implements Sec. 172(b)(2)(A); 20 U.S.C. 2402.)

§ 105.307 Conditions for continued eligibility.

(a) *Satisfactory participation.* A recipient of an award may continue to receive payments under § 105.306 only during such periods as the Commissioner finds that the recipient:

(1) Is maintaining satisfactory proficiency in study or research in the field of vocational education in an institution of higher education;

(2) Is devoting essentially full time to such study or research; and

(3) Is not engaging in gainful employment, other than part-time employment in teaching, research, or similar activities endorsed by that institution and approved by the Commissioner.

(Sec. 172(b)(5); 20 U.S.C. 2402; H.R. Rept. No. 94-1085, pp. 55-56.)

(b) *Employment limitation.* The limitation with respect to employment set forth in paragraph (a)(3) of this section does not apply to the period of time between an academic year and a summer session (or between academic years if a stipend is not received under § 105.306(b) for full-time study).

(Implements Sec. 172(b)(5); 20 U.S.C. 2402.)

§ 105.308 Payment conditioned on appropriation.

Leadership development award payments under § 105.306 after the first year of the award period (in case of awards made for a period exceeding twelve months) are subject to the continued availability of Federal funds under section 172 of the Act.

(Interprets Sec. 172; 20 U.S.C. 2402.)

§ 105.309 Technical review criteria.

The Commissioner will use the following criteria in reviewing applications. The criteria in 45 CFR 100a.26(b) do not apply to this program. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criteria. The maximum score for the criteria is 100 points, and the maximum weight for each criterion is listed below. An application must receive a minimum of 50 points to be considered for funding.

(a) *Academic ability.* (Maximum 30 points) The applicant provides evidence of his or her academic ability. This must include: (1) Transcripts of grades earned in college, including graduate courses; and may include (2) Scores

earned on the Graduate Record Examination, Miller Test of Analogies, or similar tests; and (3) Results earned on specific skill aptitude tests.

(b) *Leadership potential.* (Maximum 20 points) The applicant provides evidence of leadership potential. This may include awards or recognition received for: (1) Professional service; (2) Community activities; (3) Work with advisory committees; (4) Volunteer work; (5) Outstanding skill in interpersonal relations; and (6) Other activities as appropriate.

(c) *Managerial skills.* (Maximum 15 points) The applicant provides information concerning his or her experience in a managerial or administrative capacity. This may include evidence of the applicant's ability in: (1) Planning; (2) Problem solving; (3) Decision making; and (4) Other skills, where appropriate.

(d) *Communication skills.* (Maximum 20 points) The applicant provides evidence of experience in activities requiring oral and written language skills. This may include:

(1) Public speaking experience to professional, community, or other groups;

(2) Articles published in professional or popular journals; and

(3) Other written materials such as reports, abstracts, and instructional materials.

(e) *National need.* (Maximum 15 points) The degree to which the applicant's goals, objectives, and aspirations in vocational education relate to national needs in vocational education, including developing expertise to serve: (1) disadvantaged persons; (2) members of minority groups, and (3) handicapped persons.

(H.R. Rept. No. 94-1085, p. 55.)

(g) *Additional criteria.* In addition to the criteria listed above the Commissioner will consider the following factors: (1) Equitable distribution among males and females; (2) Geographical distribution; (3) Membership in minority groups.

(Implements Sec. 172(a)(1); 20 U.S.C. 2402; U.S.C. 2402; H.R. Rept. No. 94-1085, p. 55.)

§ 105.310 Assignment to approved institution.

Each applicant for an award shall identify a first, second, and third choice of institutions (approved under § 105.311) he or she desires to attend. The Commissioner reserves the right to redistribute award recipients among approved institutions in order to assure that each institution will have a sufficient number of awardees to assure the effectiveness of the program of vocational leadership development.

(Implements Sec. 172(a)(1); 20 U.S.C. 2402; H.R. Rept. No. 94-1085, p. 55.)

§ 105.311 Institutional eligibility and approval.

Upon receipt of an application from an institution of higher education requesting approval of its vocational education leadership development program,

the Commissioner will approve the program only upon finding that:

(a) The institution offers a comprehensive program in vocational education with adequate supporting services and disciplines, such as education administration, guidance and counseling, research, and curriculum development, including:

(Sec. 172(b)(3)(A); 20 U.S.C. 2402.)

(1) Training in those leadership skills necessary to increase the participation of disadvantaged and underrepresented persons such as the handicapped, disadvantaged minorities, and women, in vocational education programs at all levels;

(Sec. 101(1); 20 U.S.C. 2301; H.R. Rept. No. 94-1085, p. 55.)

(2) Resources and supporting services for at least five of the generally recognized fields of vocational education, integrated into a comprehensive approach to vocational education;

(3) Practical experience and internship components; and

(Implements Sec. 172(b)(3)(A); 20 U.S.C. 2402.)

(4) A focus on familiarizing the individual with new curriculum materials in vocational education.

(Sec. 172(b)(7); 20 U.S.C. 2402.)

(b) The program under paragraph (a) of this section is designed to further substantially the objective of improving vocational education by providing opportunities for graduate training for vocational education teachers, supervisors, guidance and counseling personnel, and administrators, and of university level vocational education teacher educators and researchers.

(c) The program is conducted by a school of graduate study.

(Interprets Sec. 172(b)(3)(B); 20 U.S.C. 2402.)

§ 105.312 Institutional allowance.

(a) The Commissioner will (in addition to the stipend paid to an award recipient under § 105.306) pay an institutional allowance to the institution of higher education in which the recipient is pursuing a course of study, in the amount of \$3,200 per participant, per academic year, with an additional \$800 per participant for full-time study during the summer session.

(b) The institutional allowance is made in lieu of tuition and all non-refundable fees and deposits that would otherwise be required of the student.

(c) Any portion of the institutional allowance in excess of normal tuition, non-refundable fees, and deposits attributable to the awardee shall be used by the institution to improve the program of vocational education leadership development in that institution.

(Implements Sec. 172(b)(2)(B); 20 U.S.C. 2402.)

VOCATIONAL EDUCATION CERTIFICATION FELLOWSHIP PROGRAM

§ 105.431 Purpose.

The purpose of the vocational education certification fellowships is to provide opportunities for:

(a) Certified teachers who have been trained to teach in other fields to become vocational educators if those teachers have skills and experience in vocational fields for which there is a need for vocational teachers and for which they can be trained to be vocational educators; and

(Sec. 172(a)(2); 20 U.S.C. 2402.)

(b) Persons in industry, business, and agriculture who have skills and experience in vocational fields for which there is need for vocational educators (but who do not necessarily have baccalaureate degrees) to become vocational educators.

(Interprets Sec. 172(a)(3); 20 U.S.C. 2402.)

§ 105.432 Awards to two categories of fellows.

The Commissioner is authorized to award fellowships to two categories of persons for undergraduate study in institutions of higher education:

(a) Persons who are or have been certified by a State as teachers in elementary and secondary schools, community and junior colleges, and other thirteenth and fourteenth year programs within the ten-year period prior to the current closing date for applications under this program and who:

(1) Have or have had skills and experience in vocational fields for which there is a need for vocational teachers and for which they can be trained to be vocational educators; and

(2) Are unable to find employment in their field of previous training.

(Sec. 172(c)(1), (c)(1)(A); 20 U.S.C. 2402.)

(b) Persons (not necessarily baccalaureate degree holders) employed in industry, business, or agriculture who:

(1) Have skills and experience in vocational fields in which there is a need for vocational educators; and

(2) Have been accepted by a teacher training institution for enrollment in a program which will assist them in becoming vocational educators.

(Sec. 172(c)(1)(B); 20 U.S.C. 2402.)

§ 105.433 Fellowship period.

Fellowships will be made for periods not to exceed 24 months.

(Sec. 172(c)(2)(A); 20 U.S.C. 2402.)

§ 105.434 Application procedures.

(a) *Submission of applications.* Any eligible individual who wishes to receive a vocational education certification fellowship shall submit an application to the Commissioner and send one copy of the application to the State board for vocational education for the State in which the applicant is a resident.

(b) *Role of the State board.* The State board, with advice from the State advisory council, from other agencies involved in State planning and reporting,

and from representatives of vocational education programs in institutions of higher education, will:

(1) Review the applications;

(2) Collect advice as to the merits of each application;

(3) Advise the Commissioner as to the merits of each application; and

(4) Forward all applications and statements of advice to the Commissioner for review and decision by the Commissioner.

(Implements Sec. 172(c)(1); 20 U.S.C. 2402; H.R. Rept. No. 94-1085, p. 54.)

§ 105.435 Equitable geographical distribution.

In order to meet the needs for qualified vocational education personnel in all the States, the Commissioner, without using any pre-determined formula for allocation among the States, but after applications have been reviewed and scored on their merits will make certification fellowship awards in an equitable manner among the States, taking into account such factors as:

(a) The State's vocational education enrollment; and

(b) The incidence of youth unemployment and school dropouts in the State.

(Sec. 172(c)(4); 20 U.S.C. 2402.)

§ 105.436 Stipend to fellows.

(a) *Academic year.* Each person awarded a fellowship is entitled to receive a stipend of:

(1) \$4500 for each academic year of full-time study at the institution of higher education to which that person is assigned for the fellowship period; and

(2) \$675 for each academic year for each dependent.

(b) *Summer session.* An additional stipend may be awarded of:

(1) \$900 for full-time summer study at the same institution of higher education; and

(2) \$170 for this period for each dependent.

(Implements Sec. 172(c)(2)(A); 20 U.S.C. 2402.)

§ 105.437 Conditions for continued eligibility.

(a) *Satisfactory participation.* A recipient of a fellowship may continue to receive payment under § 105.436 only during such period as the Commissioner finds that the recipient:

(1) Is maintaining satisfactory proficiency in study or research in the field of vocational education in an institution of higher education;

(2) Is devoting essentially full time to such study or research; and

(3) Is not engaging in gainful employment, other than part-time employment in teaching, research, or similar activities endorsed by that institution and approved by the Commissioner.

(Implements Sec. 172(c)(5); 20 U.S.C. 2402; H.R. Rept. No. 94-1085, pp. 55-56.)

(b) *Employment limitations.* The limitation with respect to employment set forth in paragraph (a)(3) of this

section does not apply to the period of time between an academic year and a summer session, or between academic years if a stipend is not received under § 105.436(b) for full-time summer study.

(Interprets Sec. 172(c)(5); 20 U.S.C. 2402.)

§ 105.438 Payment conditioned on appropriation.

Fellowship payments under § 105.436 after the first year of the fellowship period (in case of awards made for a period exceeding twelve months) are subject to the continued availability of Federal funds under section 172 of the Act.

(Interprets Sec. 172; 20 U.S.C. 2402.)

§ 105.439 Institutional allowance.

(a) The Commissioner will (in addition to the stipends paid to a fellowship recipient under § 105.436) pay an institutional allowance to the institution of higher education at which the recipient is pursuing his or her course of study in an amount of \$2,000 per participant per academic year, with an additional \$500 per participant for full-time study during the summer session;

(b) The institutional allowance is made in lieu of tuition and all non-refundable fees and deposits that would otherwise be required of the fellow; and

(c) Any portion of the institutional allowance in excess of the normal tuition, non-refundable fees, and deposits attributable to the fellow shall be used by the institution to improve the program of vocational education in that institution.

(Implements Sec. 172(c)(2)(B); 20 U.S.C. 2402.)

§ 105.440 Institutional eligibility and approval.

The Commissioner will approve the vocational education fellowship program of an institution of higher education only upon finding that:

(a) The program is capable of enabling unemployed certified teachers or persons from business, industry, or agriculture to become certified vocational education teachers;

(Interprets Sec. 172(c)(1)(B); 20 U.S.C. 2402.)

(b) The institution offers a program in vocational education which is sufficiently comprehensive to meet, at the undergraduate level, the requirements for certification of the applicant in the State where the institution is located;

(c) In the case of applicants seeking certification in a particular area of study designated by the Commissioner as being in need of additional personnel, the institution is capable of preparing students for certification in that particular area;

(Implements Sec. 172(c)(7); 20 U.S.C. 2402.)

(d) The fellow will receive education and training of the same type as that offered by the institution to undergraduate students preparing to become vocational education teachers; and

(e) The undergraduate program in vocational education includes adequate

support services and disciplines, such as education administration, guidance and counseling, special education for the handicapped, research, and curriculum development.

(Implements Sec. 172(c)(3); 20 U.S.C. 2402.)

§ 105.441 Teaching fields in need of additional teachers.

The Commissioner will publish, before the beginning of each fiscal year, a listing of the areas of teaching in vocational education where there are or will be shortages of personnel and will, to the maximum degree possible, award fellowships under § 105.432 to applicants seeking to become teachers in the areas identified.

(Sec. 172(c)(7); 20 U.S.C. 2402.)

§ 105.442 Content of applications.

(a) *For certified teachers.* Each certified teacher applicant shall provide in his or her application evidence of:

(1) Certification as a teacher in an elementary or secondary school or junior or community college or other thirteenth and fourteenth grade program within the ten-year period prior to the current closing date for applications under this program; and

(2) Past or current skills and experiences in the vocational field(s) in which there is a need for additional educators and for which he or she seeks training as a vocational educator; and

(3) Inability to find employment in his or her field of previous certification.

(b) *For applicants not certified as teachers.* Each applicant who has not been a certified teacher shall provide in his or her application evidence of:

(1) The nature and duration of his or her employment in business, agriculture, or industry; and

(Interprets Sec. 172(c)(1)(B); 20 U.S.C. 2402.)

(2) Having skills and experiences in one of the vocational areas where vocational educators are needed.

(Sec. 172(c)(1)(B); 20 U.S.C. 2402.)

(c) *Assurance by the institution.* The institution of higher education designated in the application for a fellowship shall provide in that application an assurance that the:

(1) Applicant has been accepted for enrollment in the program of vocational education designated in the application; and the

(2) Institution meets the requirements for institutional eligibility set forth in paragraphs (a) through (e) of § 105.440.

(Implements Sec. 172(c)(3); 20 U.S.C. 2402.)

§ 105.443 Technical review criteria.

The Commissioner will use the following criteria in reviewing formally transmitted applications. The criteria in 45 CFR 100a.26(b) do not apply to this program. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criteria.

The maximum score for the criteria is 100 points, and the maximum weight for each criterion is listed below. An application must receive a minimum of 50 points to be considered for funding.

(a) *Academic ability.* (Maximum 25 points.) The applicant provides evidence of his or her level of academic achievement and academic ability. This may include: (1) Transcripts of grades earned in secondary school and, where appropriate, college; (2) Results earned on specific skill aptitude tests; and (3) Results of other tests, where appropriate.

(b) *Vocational skills.* (Maximum 35 points.) The applicant provides evidence of his or her performance in a work situation requiring vocational skills. This may include: (1) Letters of recommendations of previous employers or others, as appropriate; (2) Results of National Occupational Competency Testing Institute, where appropriate; (3) Certificates or diplomas, as appropriate; and (4) Work related experience, including teaching, where appropriate.

(c) *Communication skills.* (Maximum 15 points.) The applicant provides evidence of experience in activities requiring oral and written language skills. This may include:

(1) Public speaking experience to professional, community, or other groups;

(2) Articles published in newspapers, professional or popular journals; and

(3) Other written materials such as reports, abstracts, or other materials, where appropriate.

(d) *Human relations skills.* (Maximum 15 points.) The applicant presents evidence of skills in interpersonal relations. This may include experience with: (1) Professional groups; (2) Community groups; (3) Volunteer groups; (4) Work related organizations; (5) Members of minority groups, the disadvantaged, and handicapped persons; and (6) Other groups, as appropriate.

(e) *National need.* (Maximum 10 points.) The applicant describes in writing his or her goals, objectives, and aspirations in vocational education and their relationship to national needs in vocational education with particular reference to the elimination of sex stereotyping and working with the following populations: (1) Disadvantaged persons; (2) Members of minority groups; and (3) Handicapped persons. (H.R. Rept. No. 94-1085, p. 55.)

(f) *Additional factors.* In addition to the criteria listed above, the Commissioner will consider the following factors: (1) Equitable distribution among males and females; (2) Geographical distribution; (3) Membership in minority groups; and (4) The applicant's intention to become certified in a vocational field not traditionally open to persons of the applicant's sex, or to become certified in a new field or one not commonly taught.

(Implements Sec. 101(3), 172(b)(4); 20 U.S.C. 2301, 2402; H.R. Rept. No. 94-1085, p. 55.)

Subpart 4—Emergency Assistance for Remodeling and Renovating of Vocational Education Facilities

§ 105.501 Purpose.

The purpose of this program is to provide emergency assistance to local educational agencies in urban and rural areas which are unable to provide vocational education designed to meet today's manpower needs due to the age of their vocational education facilities or the obsolete nature of the equipment used for vocational training. The purpose is to assist those local educational agencies in the modernization of facilities or equipment and the conversion of academic facilities necessary to assure that the facilities will be able to offer vocational education programs which give reasonable promise of employment.

(Sec. 191; 20 U.S.C. 2441.)

§ 105.502 Eligible applicants.

(a) Any local educational agency in an urban or rural area is an eligible applicant.

(Sec. 193(a); 20 U.S.C. 2443.)

(b) "Rural area" means an area which is not included within a Standard Metropolitan Area (as defined by the U.S. Bureau of Census) and which is not within or coterminous with, a city, town, borough, or village, or other subcounty political unit, the population of which exceeds 2,500.

(c) "Urban area" means an area within a city, town, or borough with a population of over 100,000.

(Implements Sec. 198(a); 20 U.S.C. 2443.)

§ 105.503 Content of applications.

An application for a grant or assistance contract shall set forth:

(a) A description of the facility to be remodeled or renovated, including:

(1) The date of completion of construction of the facility (or the part of the facility to be remodeled or renovated);

(2) The extent of remodeling or renovation necessary to enable the facility to provide a modern program of vocational education;

(b) A description of the equipment to be replaced or modernized and reference to the particular purpose for which the equipment will be used;

(c) A description of the extent to which the modernization or conversion of facilities and equipment will be consistent with, and further the goals of, the five-year State plan, including the elimination of sex and racial bias and sex stereotyping in vocational education programs;

(d) The financial ability of the local educational agency to undertake the modernization without Federal assistance;

(Implements Sec. 193(a)(1)-(4); 20 U.S.C. 2443.)

(e) Assurance that the facility to be remodeled or renovated will meet standards adopted pursuant to the Architectural Barriers Act;

(Sec. 193(a)(5); 20 U.S.C. 2443; 42 U.S.C. 4151-4156.)

(f) The extent of State and local funds available to match Federal funds together with the sources and amounts of the funds;

(g) Such other information as the State board determines to be appropriate.

(Sec. 193(a)(6), (7); 20 U.S.C. 2443.)

(h) The reasons why renovation or remodeling rather than replacement is planned or why some other facility is not available;

(i) The cost of each major item of renovation or remodeling; and

(j) Facts showing that renovation or remodeling is cost effective.

(Implements Sec. 193(a)(8); 20 U.S.C. 2443.)

§ 105.504 Submission of applications through the State board.

An applicant shall send the application to the Commissioner through the State board.

(Sec. 193(a); 20 U.S.C. 2443.)

§ 105.505 Technical review criteria.

(a) The Commissioner will rank all applicants according to their relative need for assistance.

(Sec. 193(c); 20 U.S.C. 2443.)

(b) The relative need for assistance will be determined by the following criteria (total 100 points):

(1) The age or obsolescence of the facilities and equipment for which assistance is sought (maximum 17 points);

(2) The rate of youth unemployment in the labor market area served by the local educational agency (maximum 12 points);

(3) The number of youth aged seventeen through twenty-one residing in the labor market area served by the local educational agency who are unemployed (maximum 12 points);

(4) The percentage such youth represent, as compared with the vocational education enrollment in the local educational agency (maximum 12 points);

(5) The ability of the facility to comply with the standards adopted pursuant to the Architectural Barriers Act (maximum 5 points);

(Sec. 193(b)(1) (A) through (E); 20 U.S.C. 2443; 42 U.S.C. 4151 through 4156.)

(6) The need for the proposed facilities or equipment in relation to the employment needs of the State or labor market area (maximum 12 points);

(7) Adequacy of the proposed facilities or equipment for the training or educational requirements of the specific vocational training program(s) to be accommodated by the proposed facilities or equipment (in terms of linedrawings and educational specifications) (maximum 10 points);

(8) Evidence that the proposed renovation or remodeling or equipment is economical and is not elaborate or extravagant (maximum 5 points);

(9) Evidence that the planned renovation or remodeling is a more cost-

effective approach than replacement (maximum 5 points); and

(10) Evidence that the local educational agency does not have the financial ability to undertake the proposed project without Federal assistance, and the ability of the State education agency and the local education agency to match proposed Federal funds (maximum 10 points).

(Implements, Sec. 192(b)(1); 20 U.S.C. 2442.)

(c) In approving applications, the Commissioner will consider the degree to which the modernization of facilities and equipment proposed in the application affords promise of achieving the goals set forth in the approved five-year State plan.

(Sec. 193(b)(2); 20 U.S.C. 2443.)

§ 105.506 Payments to local educational agencies.

(a) The Commissioner will pay 75 percent (except as noted in paragraph (b)) of the cost of approved applications in the order they are ranked under § 105.505(b).

(Sec. 193(c); 20 U.S.C. 2443.)

(b) The Commissioner may waive the 75 percent limit and may pay up to the full cost of the project upon the Commissioner's finding, in writing, that a local educational agency with an approved application is suffering from extreme financial need and cannot, because of the 75 percent limit, participate in the program.

(Sec. 193(e); 20 U.S.C. 2443.)

(c) Applications will be funded until the appropriation is exhausted.

(d) The Commissioner will reserve from the appropriation for the fiscal year for which the application is made an amount sufficient to pay the entire Federal share of each approved project and will obligate that amount from the appropriation even though the project may not be completed within the fiscal year.

(Interprets Sec. 194(a); 20 U.S.C. 2444.)

(e) The Commissioner will pay approved applicants in advance or by way of reimbursement, or in installments consistent with HEW practices.

(Sec. 194(b); 20 U.S.C. 2444.)

§ 105.507 Construction requirements.

The Office of Education's regulations for the Commissioner's direct project grant and contract programs (45 CFR Part 100a shall apply to projects for assistance under this program, particularly the Commissioner's regulations on "Bonding and Insurance" (45 CFR Part 100a, Subpart J, §§ 100a.120-122) and on "Construction Requirements" (Subpart K, §§ 100a.155-192), (45 CFR Part 100a). In addition, the non-discrimination provisions in 45 CFR Part 80 apply. This includes 45 CFR 80.3(b)(3) which provides that, in determining the site or location of the facility, a recipient may not make selections with the effect of excluding individuals from, denying them the bene-

fits of, or subjecting them to discrimination on the grounds of race, color, or national origin.

(Implements Sec. 193; 20 U.S.C. 2443.)

Subpart 5—Bilingual Vocational Education

BILINGUAL VOCATIONAL TRAINING PROGRAM

§ 105.601 Purpose.

The purpose of the bilingual vocational training program is to prepare persons of limited English-speaking ability to perform adequately in an environment requiring English language skills and to fill the critical need for more and better trained persons in occupational categories vital to both the persons and the economy. Funds available to the Commissioner pursuant to section 183 of the Act may be used for making grants or contracts for bilingual vocational training programs.

(Sec. 181; 20 U.S.C. 2411; Conf. Rept. No. 94-1701, p. 228.)

§ 105.602 Eligible programs.

Sixty-five percent of the funds available under section 183 of the Act may be used by the Commissioner to award grants or contracts for the cost of operating programs designed to carry out the purposes set forth in § 105.601 in an amount equal to the total sum expended by the applicant for the purposes set forth in the application. No cost sharing is required. These programs include:

(a) Bilingual vocational training programs for persons who have completed or left elementary or secondary school. Programs for secondary school students are not eligible;

(b) Bilingual vocational training programs for persons who have already entered the labor market and who desire or need training or retraining to achieve year-round employment, adjust to changing employment needs, expand their range of skills, or advance in employment.

Training allowances for participants in bilingual vocational training programs described in paragraphs (a) and (b) of this section are an allowable cost. Allowances are subject to the same conditions and limitations as set forth in the Department of Labor Regulations 29 CFR 95.34. Applicants may waive training allowances in accordance with the waiver procedure in 29 CFR 95.34(j).

(Sec. 185; 20 U.S.C. 2415.)

§ 105.603 Eligible applicants.

The following agencies or institutions are eligible for grants or contracts, except item (f) being eligible only for contracts:

- (a) Local educational agencies;
- (b) State agencies;
- (c) Postsecondary educational institutions;
- (d) Private nonprofit vocational training institutions; and
- (e) Nonprofit educational or training organizations especially created to serve a group whose language as normally used is other than English; and

(f) Private for profit agencies and organizations.

(Sec. 184; 20 U.S.C. 2414.)

§ 105.604 Applications for grants or contracts.

(a) An applicant shall submit a copy of the application to the State board at the same time it is submitted to the Office of Education. The State board shall submit its comments to the Office of Education within 30 days after the closing date for applications.

(b) An applicant shall provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant.

(c) An applicant shall set forth a bilingual vocational training program of such size, scope, and design as will make a substantial contribution toward carrying out the purposes described in § 105.601.

(d) An applicant shall provide an assurance that the program will include instruction in the English language and in the trainee's dominant language in order to insure that participants in the training will be assisted to pursue occupations in work environments where English is the language normally used.

(e) An applicant shall submit an amendment, if any, to the application in the same manner as the applicant submitted the original application. A request for funding by an applicant who has had a prior award(s) shall include an evaluation of the previous project and will be reviewed competitively with new applications.

(Sec. 184; 20 U.S.C. 2414; Sec. 189A(b); 20 U.S.C. 2420.)

§ 105.605 Review of applications.

(a) The Commissioner may approve an application for assistance under the bilingual vocational training program only if the application:

(1) Meets the requirements set forth in § 105.604;

(2) Is consistent with the criteria set forth in § 105.606; and

(3) Is submitted to the Commissioner at the time, in the manner and containing the information the Commissioner deems necessary, as set forth in the Notice of Closing Date to be published in the FEDERAL REGISTER.

(b) Prior to making awards in a State, the Commissioner will, where feasible, consult with the State board to achieve equitable distribution of assistance among populations of persons of limited English-speaking ability with the most acute need for training within the State.

(Sec. 189A, 189B(a) (3); 20 U.S.C. 2420, 2421.)

§ 105.606 Technical review criteria.

The Commissioner will use the following criteria in reviewing formally transmitted applications. These criteria are consistent with 45 CFR 100a.26, Review of Applications in the Office of Education, General Provisions for Programs. A segment or segments of an application should address each criterion. Each cri-

terion is weighted and includes the maximum score that can be given to an application in relation to the criterion. The maximum score for the criteria is 100 points, and the maximum weight for each criterion is listed below. An application must receive a minimum of 30 points to be considered for funding.

(a) *Need.* (Maximum 10 points.)

(1) Describes the need for the proposed bilingual vocational training;

(2) Provides specific evidence of the need;

(3) Indicates specifically how the need will be met; and

(4) Describes, where appropriate, ongoing and planned activities in the community relative to the need.

(b) *Objectives.* (Maximum 10 points.)

(1) Are significant and meet clearly identified needs in bilingual vocational training;

(2) Clearly describe the proposed project outcomes; and

(3) Are capable of being measured and attained.

(c) *Plan.* (Maximum 15 points.) The plan clearly describes the way in which the objectives will be accomplished by:

(1) The overall design for the proposed project; and

(2) The specific procedures of each segment of the design. Normally the plan will include a description of:

(i) Proposed trainees;

(ii) Recruiting procedures to be used;

(iii) Training program including a description of both the bilingual vocational training and the language instruction which is designed to assure that trainees will acquire sufficient competency in English to work in environments where English is the language normally used;

(iv) Support services to be offered to trainees;

(v) Instructional materials to be used in the proposed program;

(vi) Anticipated level of skill of the trainees at the end of the proposed training;

(vii) Activities to be used in aiding trainees to secure employment, if appropriate; and

(viii) Tests to be used in the proposed program components.

(d) *Management plan.* (Maximum 8 points.) The management plan adequately describes the way in which personnel and resources will be used to accomplish each component of the plan developed in criterion (c).

(e) *Evaluation plan.* (Maximum 12 points.) The plan includes valid and reliable procedures for assessing and documenting the bilingual vocational training program and the progress of the trainees.

(f) *Applicant's staff competencies and experience.* (Maximum 25 points.) The application clearly describes:

(1) The names and qualifications (including project management qualifications) of the project director, professional staff, consultants, and advisory groups;

(2) Time commitments planned for the project director, staff, advisory groups, and any consultants;

(3) Evidence of past and successful experience of the proposed project director and key staff members in similar or related projects; and

(4) Staff competencies that are essential for the proposed project including proficiency in the language of the trainees.

(g) *Budget and cost effectiveness.* (Maximum 10 points.)

(1) The application provides a justifiable and itemized statement of cost which is substantiated by line items in the proposed budget and is cost effective;

(2) The application includes information concerning the average cost per trainee.

(b) *Institutional capability and commitment.* (Maximum 10 points.) The application provides adequate evidence of:

(1) Institutional experience and commitment to the proposed work;

(2) Appropriate facilities and equipment necessary for the proposed project; and

(3) Documented assurance of support from cooperating agencies, institutions, or community groups where applicable for successful implementation of the project.

(Implements Sec. 189A; 20 U.S.C. 2420.)

§ 105.607 Additional application review factors.

In addition to the criteria listed in § 105.606, the Commissioner may utilize factors such as the following in making decisions regarding whether to fund applications. (a) Duplication of effort; (b) Duplication of funding; and (c) Evidence that an applicant has not performed satisfactorily on previous projects.

(Implements Sec. 181; 20 U.S.C. 2411.)

BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM

§ 105.611 Purpose.

The purpose of the bilingual vocational instructor training program is to provide training programs to meet the critical shortage of instructors possessing both the job knowledge and skills and the dual language capabilities required for adequate instruction of persons handicapped by their limited English-speaking ability. Funds available to the Commissioner pursuant to section 183 of the Act may be used for making grants or contracts for bilingual vocational instructor training programs.

(Sec 186; 20 U.S.C. 2416.)

§ 105.612 Eligible programs.

Twenty-five percent of the funds available under section 183 of the Act may be used by the Commissioner to award grants or contracts for the cost of conducting training for instructors of bilingual vocational training programs in an amount equal to the total sum expended by the applicant for the purposes set forth in that application. No cost sharing is required. These programs include:

(a) Pre-service training programs designed to prepare persons to participate in bilingual vocational training or bilingual vocational education as: (1) Instructors; (2) Aides; and (3) Ancillary personnel such as guidance personnel and counselors.

(b) In-service and developmental programs designed to enable instructional and ancillary personnel to continue to improve their qualifications while participating in bilingual vocational training programs; fellowships or traineeships for persons engaged in activities described in (a) and (b) are an allowable cost. A fellowship is an award to an individual student made by a granting agency of the Department. A traineeship is an award to an institution for student support (stipends or allowances) and for institutional support (either in a predetermined amount or based on actual costs).

(Sec. 186; Sec. 187; 20 U.S.C. 2416; 20 U.S.C. 2417.)

§ 105.613 Eligible applicants.

The following categories of agencies or institutions are eligible for grants or contracts, except item (c) being eligible only for contracts: (a) State agencies; (b) Public and private nonprofit educational institutions; and (c) Private-for-profit educational institutions.

(Sec. 186; 20 U.S.C. 2416.)

§ 105.614 Applications for grants or contracts.

(a) An applicant shall provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant.

(b) An applicant shall set forth in the application a bilingual vocational instructor training program of a type described in § 105.612;

(c) An applicant shall describe in the application the capabilities of the applicant institution in terms of:

(1) A listing of the vocational training or vocational education courses offered by that institution;

(2) Appropriate accreditation by regional or national associations, if any;

(3) Approval by appropriate State agencies of the courses offered; and

(4) Qualifications of the principal staff who will be responsible for the training program.

(d) An application shall describe clearly (and in detail) in the application the trainees in terms of the:

(1) Minimum qualifications of the persons to be enrolled in the training program;

(2) Selection process of the trainees; and

(3) Amounts of fellowships or traineeships, if any, to be granted to the persons enrolled.

(e) An applicant shall submit an amendment, if any, to the application in the same manner as the applicant submitted the original application. A request for funding by an applicant who has had a prior award(s) shall include

an evaluation of the previous project and will be reviewed competitively with new applications.

(Sec. 189A; 20 U.S.C. 2420.)

§ 105.615 Review of applications.

(a) The Commissioner may approve an application for assistance under the bilingual vocational instructor training program only if the application:

(1) Meets the requirements set forth in § 105.614;

(2) Is consistent with the criteria set forth in § 105.616;

(3) Is submitted to the Commissioner at the time, in the manner and containing the information the Commissioner deems necessary, as set forth in the Notice of Closing Date to be published in the FEDERAL REGISTER.

(4) The applicant institution actually has an ongoing vocational training program in the field in which persons are being trained; and

(5) The applicant institution can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual vocational training program for which persons are being trained.

(b) Prior to making awards in a State, the Commissioner will, where feasible, consult with the State board to achieve equitable distribution of assistance among populations of persons of limited English-speaking ability with the most acute need for training within the State.

(Secs. 189A, 189B(a)(3); 20 U.S.C. 2420, 2421.)

§ 105.616 Technical review criteria.

The Commissioner will use the following criteria in reviewing formally transmitted applications. These criteria are consistent with 45 CFR 100.26, Review of Applications in the Office of Education, General Provisions for Programs. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criterion. The maximum score for the criterion is 100 points, and the maximum weight for each criterion is listed below. An application must receive a minimum of 30 points to be considered for funding.

(a) *Need.* (Maximum 10 points) The need section clearly: (1) Describes the need for the proposed instructor training; (2) Provides specific evidence of the need; (3) Indicates specifically how the need will be met; and (4) Describes, where appropriate, ongoing and planned activities in the community relative to the need.

(b) *Objectives.* (Maximum 10 points) The objectives are related to the problem and: (1) Are significant for pre-service or in-service training; (2) Clearly describe the proposed training program; and (3) Are capable of being measured and attained.

(c) *Plan.* (Maximum 15 points) The plan clearly describes the way in which the objectives will be accomplished by the: (1) Overall design for the proposed

project; (2) Specific procedures of each segment of the design in terms of accomplishing the objectives; (3) Normally the plan will include:

(i) Description of the training program, including all program components;

(ii) Description of the minimum qualifications of the persons to be enrolled in the training program;

(iii) Description of the selection process and the amounts of the fellowships or traineeships, if any, to be granted to persons enrolled in the program;

(iv) Evidence that the applicant institution actually has an ongoing vocational training or vocational education program in the field for which persons are to be trained, including a listing of the vocational courses offered by the institutions;

(v) Evidence that the applicant institution can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual job training program for which the persons are being trained; and

(vi) Evidence that a need exists for instructors who will receive training in the proposed project.

(d) *Management plan.* (Maximum 8 points) The management plan adequately describes the way in which personnel and resources will be used to accomplish each component of the plan developed in criterion (c).

(e) *Evaluation plan.* (Maximum 12 points) The plan includes rigorous procedures for assessing and documenting the instructor training program including both the vocational component and the language component.

(f) *Applicant's staff competencies and experience.* (Maximum 25 points) The application clearly describes:

(1) The names and qualifications (including project management qualifications) of the project director, professional staff, consultants, and advisory groups;

(2) Time commitments planned for the project director, key staff, advisory groups, and any consultants;

(3) Evidence of past and successful experience of the proposed project director and key staff members in similar or related projects; and

(4) Staff competencies that are essential for the proposed project, including proficiency in English and in the language other than English.

(g) *Budget and cost effectiveness.* (Maximum 10 points.) The application provides a justifiable and itemized statement of cost which is substantiated by line items in the proposed budget and appears to be cost effective.

(h) *Institutional capability and commitment.* (Maximum 10 points.) The application provides adequate evidence of:

(1) Institutional experience and commitment to the proposed work;

(2) Appropriate facilities and equipment necessary for the proposed project;

(3) Appropriate accreditation of the applicant institution by regional or national associations and approval by ap-

propriate State agencies of the courses offered; and

(4) Documented assurance of support from cooperating agencies, institutions, or community groups where applicable for successful implementation of the project.

(Implements Sec. 189A; 20 U.S.C. 2420.)

§ 105.617 Additional application review factors.

In addition to the criteria listed in § 105.616, the Commissioner may utilize factors such as the following in making decisions regarding whether to fund applications.

(a) Duplication of effort;

(b) Duplication of funding; and

(c) Evidence that an applicant has not performed satisfactorily on previous projects.

(Implements Sec. 181; 20 U.S.C. 2411.)

BILINGUAL VOCATIONAL INSTRUCTIONAL MATERIALS, METHODS, AND TECHNIQUES PROGRAM

§ 105.621 Purpose.

The purpose of the bilingual vocational instructional materials, methods, and techniques program is to develop instructional materials and encourage research programs and demonstration projects to meet the critical shortage of such instructional materials suitable for bilingual vocational training programs. Funds available to the Commissioner pursuant to section 183 of the Act may be used for making grants or contracts for bilingual vocational instructional materials, methods, and techniques.

(Sec. 188; 20 U.S.C. 2418.)

§ 105.622 Eligible programs.

Ten percent of the funds available under section 183 of the Act may be used by the Commissioner to award grants or contracts for the cost of developing and testing instructional materials, methods, or techniques for bilingual vocational training in an amount equal to the total sum expended by the application for the purposes set forth in that application. No cost sharing is required. These programs include:

(a) Research in bilingual vocational training;

(b) Development of instructional materials;

(c) Training programs designed to familiarize State agencies and training institutions with research findings and successful pilot and demonstration projects in bilingual vocational training;

(d) Experimental, developmental, and pilot programs and projects designed to test the effectiveness of research findings; and

(e) Other demonstration and dissemination projects in bilingual vocational training.

(Sec. 189; 20 U.S.C. 2419.)

§ 105.623 Eligible applicants.

The following categories of agencies or institutions are eligible for grants or

contracts, except items (e) and (f) being eligible only for contracts: (a) State agencies; (b) Public educational institutions; (c) Private educational institutions; (d) Nonprofit organizations; (e) Private-for-profit organizations; and (f) Individuals.

(Sec. 188; 20 U.S.C. 2418.)

§ 105.624 Applications for grants or contracts.

(a) An applicant shall provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant.

(b) An applicant shall set forth in the application a bilingual vocational instructional materials, methods, and techniques program of a type described in § 105.622.

(c) An applicant shall set forth in the application the qualifications of the staff who will be responsible for the program for which assistance is sought.

(d) An applicant shall submit an amendment, if any, to the application in the same manner as the applicant submitted the original application. A request for funding by an applicant who has had a prior award(s) will be reviewed competitively with new applications.

(Sec. 189A; 20 U.S.C. 2420.)

§ 105.625 Review of applications.

The Commissioner may approve an application for assistance under the bilingual vocational instructional materials, methods, and techniques program only if the application:

(a) Meets the requirements set forth in § 105.624;

(b) Is consistent with the criteria set forth in 105.626; and

(c) Is submitted to the Commissioner at the time, in the manner and containing the information the Commissioner deems necessary, as set forth in the Notice of Closing Date to be published in the FEDERAL REGISTER.

(Sec. 189A; 20 U.S.C. 2420.)

§ 105.626 Technical review criteria.

The Commissioner will use the following criteria in reviewing formally submitted applications. These criteria are consistent with 45 CFR 100a.26, Review of Applications in the General Provisions for Office of Education Programs. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criterion. The maximum score for the criteria is 100 points, and the maximum weight for each criterion is listed below. An application must receive a minimum score of 50 points to be considered for funding.

(a) *Need.* (Maximum 20 points) The need section clearly:

(1) Describes the national significance and the need in bilingual vocational training for the proposed project;

(2) Provides specific evidence of the need;

(3) Indicates specifically who or what will be helped; and

(4) Describes the problem rather than the symptoms of the problem.

(b) *Literature review.* (Maximum 5 points) The literature review is sufficiently comprehensive to:

(1) Establish the basis for the problem;

(2) Describe the problem in contrast to the symptoms of the problem;

(3) Provide a strong conceptual framework for the proposed objectives and proposed plan, including the general design and specific procedures of the proposed plan, along with the management, evaluation, dissemination, and training procedures (when appropriate); and

(4) Describe what has been done previously to alleviate the problem and point out the gaps that will be alleviated by this specific proposed work.

(c) *Objectives.* (Maximum 10 points) The objectives are related to the problem and: (1) Are significant for bilingual vocational training; (2) Clearly describe proposed project outcomes; (3) Are capable of being attained; and (4) Are measurable.

(d) *Plan.* (Maximum 15 points) The plan clearly describes:

(1) The overall design for the proposed project; and

(2) The specific procedures by which each objective will be accomplished. Normally the plan will include:

(i) Precise definitions of terms; (ii) Description of the characteristics and number of subjects; (iii) Sampling procedures and control groups; (iv) Instrumentation; and (v) Statistical and analytical procedures.

(e) *Management plan.* (Maximum 10 points.) The management plan adequately describe the way in which personnel and resources will be used to accomplish each component of the plan developed in criterion (c).

(f) *Evaluation plan.* (Maximum 10 points.) The plan includes rigorous procedures for assessing and documenting the impact of project results and end products or outcomes in terms of the achievement of project goals and objectives.

(g) *Results, end products, outcomes, and dissemination.* (Maximum 10 points.) The application clearly describe:

(1) What will be delivered to the government;

(2) The format in which the results, products, or outcomes will be delivered to the government;

(3) The way in which results, products, or outcomes will be developed or provided for dissemination purposes to specified user populations, and

(4) The procedures to be used in disseminating the results, and products, or outcomes at the local, State, and/or national levels.

(h) *Applicant's staff competencies and experience.* (Maximum 10 points.) The application clearly describes:

(1) The names and qualifications (including project management qualifica-

tions) of the project director, key professional staff, advisory groups, and consultants;

(2) Time commitments planned for the project by the project director, key staff, advisory groups, and consultants;

(3) Evidence of past and successful experience of the proposed project director and key staff members in similar or related projects; and

(4) The competencies that are required for the proposed project.

(i) *Budget and cost effectiveness.* (Maximum 5 points.) The application provides a justifiable and itemized statement of cost which is substantiated by line items in the proposed budget and appears to be cost effective with respect to proposed results, products, or outcomes.

(j) *Applicant's capability and commitment.* (Maximum 5 points.) The application provides adequate evidence of:

(1) Institutional or individual's experience and commitment to the proposed work;

(2) Appropriate facilities and equipment; and

(3) Documented assurance of support from cooperating agencies, local educational agencies or postsecondary institutions, business, industry, and labor, where applicable for successful implementation of the project.

(Implements Sec. 189A; 20 U.S.C. 2420.)

§ 105.627 Additional application review factors.

In addition to the criteria listed in § 105.626, the Commissioner may utilize factors such as the following in making decisions regarding whether to fund applications.

(a) Duplication of effort;

(b) Duplication of funding; and

(c) Evidence that an applicant has not performed satisfactorily on previous projects.

(Implements Sec. 181; 20 U.S.C. 2411.)

APPENDIX A DEFINITIONS

"Act" means the Vocational Education Act of 1963, Pub. L. 88-210, as amended by Title II of the Education Amendments of 1976, Pub. L. 94-482, 90 Stat. 2168, 20 U.S.C. 2301 et seq.

(Secs. 101-195, 20 U.S.C. 2301 et seq.)

"Administration" means activities of a State or an eligible recipient necessary for the proper and efficient performance of its duties under the Act, including supervision, but not including ancillary services.

(Sec. 195(20); 20 U.S.C. 2461.)

"Adult program" means (for reporting purposes) vocational education for persons who have already entered the labor market or who are unemployed or who have completed or left high school and who are not described in the definition of "postsecondary program."

(Sec. 110(c); 20 U.S.C. 2461.)

"Ancillary services" means activities which contribute to the enhancement of quality in vocational education programs, including activities such as teacher training and curriculum development, but excluding administra-

tion (except in consumer and homemaking education under Section 150 of the Act).

(Implements Sec. 195(20); 20 U.S.C. 2461.)

"Area vocational education school" means:

(a) A specialized high school used exclusively or principally for the provision of vocational education to persons who are available for study in preparation for entering the labor market;

(b) The department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to persons who are available for study in preparation for entering the labor market; or

(c) A technical or vocational school used exclusively or principally for the provision of vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market; or

(d) The department or division of a junior college or community college or university operating under the policies of the State board which provides vocational education in no less than five different occupational fields, leading to immediate employment but not necessarily leading to a baccalaureate degree, if:

(1) The vocational programs are available to all residents of the State or an area of the State designated and approved by the State board; and

(2) In the case of a school, department, or division described in (c) or (d), it admits as regular students both persons who have completed high school and persons who have left high school.

(Sec. 195(2); 20 U.S.C. 2461.)

"Bilingual vocational training" means training or retraining in which instruction is presented in both the English language and the dominant language of the persons receiving training and which is conducted as part of a program designed to prepare individuals of limited English-speaking ability for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations, but excluding any program to prepare individuals for employment in occupations which require a baccalaureate or advanced degree; bilingual vocational training includes guidance and counseling (either individually or through group instruction) in connection with such training or for the purpose of facilitating occupational choices; instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training; the training of persons engaged as, or preparing to become, instructors in a bilingual vocational training program; and the acquisition, maintenance, and repair of instructional supplies, aids, and equipment, but such term does not include the construction, acquisition, or initial equipment of buildings or the acquisition or rental of land.

(Implements Sec. 181; 20 U.S.C. 2411)

"CETA" means the Comprehensive Employment and Training Act of 1973, Pub. L. 93-23, 87 Stat. 839, as amended.

"Commissioner" means the U.S. Commissioner of Education or the Commissioner's designee.

(Sec. 195(5); Sec. 421A(a) of GEPA; 20 U.S.C. 2461.)

"Construction" includes:

(a) Construction of new buildings;

(b) Acquisition, expansion, remodeling, and alteration of existing buildings;

(c) Site grading and improvement; and

(d) Architect fees.

(Sec. 195(4); 20 U.S.C. 2461.)

"Cooperative education" means a program of vocational education for persons who, through written cooperative arrangements between the school and employers, receive instruction, including required academic courses and related vocational instruction by alternation of study in school with a job in any occupational field, but these two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and to his or her employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

(Sec. 195(18); 20 U.S.C. 2461.)

"Curriculum materials" means materials:

(a) Covering instruction in a course or series of courses in any occupational field; and

(b) Designed to prepare persons for employment at the entry level; or

(c) Designed to upgrade occupational competencies of those previously or presently employed in any occupational field.

(Sec. 195(19); 20 U.S.C. 2461.)

"Disadvantaged" means:

(a) Persons (other than handicapped persons) who:

(1) Have academic or economic disadvantages; and

(2) Require special services, assistance, or programs in order to enable them to succeed in vocational education programs.

(Sec. 195(16); 20 U.S.C. 2461.)

(b) "Academic disadvantage," for the purposes of this definition of "disadvantaged," means that a person:

(1) Lacks reading and writing skills;

(2) Lacks mathematical skills; or

(3) Performs below grade level.

(c) "Economic disadvantage," for the purposes of this definition of "disadvantaged," means:

(1) Family income is at or below national poverty level;

(2) Participant or parent(s) or guardian of the participant is unemployed;

(3) Participant or parent of participant is recipient of public assistance; or

(4) Participant is institutionalized or under State guardianship.

(Interprets Sec. 195(16); 20 U.S.C. 2461.)

"Eligible recipient" means:

(a) A local educational agency, or

(b) A postsecondary educational institution.

(Sec. 195(13); 20 U.S.C. 2461.)

"Financial ability," as used in section 106(a)(5)(B)(i) of the Act means the property wealth per capita of local school districts and of other public agencies having a tax base or the total tax effort of the area served by these schools and agencies as that effort is a percentage of the income per capita of those within the taxing body.

(Implements Sec. 106(a)(5)(B)(i); 20 U.S.C. 2306; H. Rept. No. 94-1085, p. 34.)

"Handicapped" means:

(a) A person who is:

(1) Mentally retarded;

(2) Hard of hearing;

(3) Deaf;

(4) Speech impaired;

(5) Visually handicapped;

(6) Seriously emotionally disturbed;

(7) Orthopedically impaired; or

(8) Other health impaired person, or persons with specific learning disabilities; and

(b) Who, by reason of the above:

(1) Requires special education and related services, and

(2) Cannot succeed in the regular vocational education program without special educational assistance; or

(3) Requires a modified vocational education program.

(Sec. 195(7); Sec. 602(1) of the Education of Handicapped Act; 20 U.S.C. 2461; 20 U.S.C. 4001.)

"HEW" means the Department of Health, Education, and Welfare.

(42 U.S.C. 3501.)

"High school program" means vocational education for persons in grades 9 through 12.

(Implements Sec. 101; 20 U.S.C. 2461.)

"Industrial arts education programs" means those education programs:

(a) Which pertain to the body of related subject matter, or related courses, organized for the development of understanding about all aspects of industry and technology, including learning experiences involving activities such as experimenting, designing, constructing, evaluating, and using tools, machines, materials, and processes; and

(b) Which assist individuals in making informed and meaningful occupational choices or which prepare them for entry into advanced trade and industrial or technical education programs.

(Sec. 195(15); 20 U.S.C. 2461.)

"Institution of higher education" means institution of higher education as defined in section 1201(a) of the Higher Education Act.

(Sec. 1201(a) of the Higher Education Act, 20 U.S.C. 1141(a).)

"Limited English-speaking ability" when used in reference to an individual means:

(a) Individuals who were not born in the United States or whose native tongue is a language other than English; and

(b) Individuals who came from environments where a language other than English is dominant, and by reasons thereof, have difficulties speaking and understanding instruction in the English language.

(20 U.S.C. 880b-1.)

"Local educational agency" means:

(a) A board of education (or other legally constituted local school authority) having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision of a State; or

(b) Any other public educational institution or agency having administrative control and direction of a vocational educational program.

(Sec. 195(10); 20 U.S.C. 2461.)

"Low-income family or individual" means families or individuals who are determined to be low-income according to the latest available data from the Department of Commerce.

(Sec. 195(17); 20 U.S.C. 2461.)

"National Advisory Council" (NACVE) means the previously existing National Advisory Council on Vocational Education which is continued by section 162 of the Act.

(Sec. 195(14); 20 U.S.C. 2461.)

"Postsecondary educational institution" means a nonprofit institution legally authorized to provide postsecondary education within a State for persons sixteen years of age or older, who have graduated from or left elementary or secondary school.

(Sec. 195(12); 20 U.S.C. 2461.)

"Postsecondary program" means (for reporting purposes) vocational education for persons who have completed or left high school and who are enrolled in organized programs of study for which credit is given toward an associate or other degree, but which programs are not designed as baccalaureate or higher degree programs.

(Sec. 110(c); 20 U.S.C. 2310.)

"Private vocational training institution" means a business or trade school, or technical institution or other technical or vocational school, in any State, which (a) admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by such institution; (b) is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations; (c) has been in existence for two years or has been specially accredited by the Commissioner as an institution meeting the other requirements of this subsection; and (d) is accredited (1) by a nationally recognized accrediting agency or association listed by the Commissioner pursuant to this clause, or (2) if the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Commissioner pursuant to this clause, or (3) if the Commissioner determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by him and composed of persons specially qualified to evaluate training provided by schools of that category, which committee shall prescribe the standards of content, scope, and quality which must be met by those schools and shall also determine whether particular schools meet those standards. For the purpose of this paragraph, the Commissioner shall publish a list of nationally recognized accrediting agencies or associations and State agencies which he determines to be reliable authority as to the quality of education or training afforded." (Pub. L. 95-40; 20 U.S.C. 2461(21).)

"School facilities" means:

(a) Classrooms and related facilities (including initial equipment) and interests in lands on which such facilities are constructed.

(b) "School facilities" does not include any facility intended primarily for events for which admission is to be charged to the general public.

(Sec. 195(3); 20 U.S.C. 2461.)

"Secondary program" means vocational education for persons in secondary grades as defined by State law.

(Implements Sec. 101; 20 U.S.C. 2301.)

"Secretary" means the Secretary of Health, Education, and Welfare.

(Sec. 195(6); 20 U.S.C. 2461.)

"State" includes:

(a) The 50 States;

(b) The District of Columbia;

(c) The Commonwealth of Puerto Rico;

(d) The Virgin Islands;

(e) Guam;

(f) American Samoa; and

(g) The Trust Territory of the Pacific Islands.

(Sec. 195(8); 20 U.S.C. 2461.)

"State board" means the State board designated or created by State law as the sole State agency responsible for:

(a) The administration of vocational education; or

(b) Supervision of the administration of vocational education in the State.

(Sec. 195(9); 20 U.S.C. 2461.)

"State educational agency" (SEA) means:

(a) The State board of education; or
(b) Other agency or office primarily responsible for the State supervision of public elementary and secondary schools; or

(c) If there is no such office or agency, an office or agency designated by the Governor or by State law.

(Sec. 195(11); 20 U.S.C. 2461.)

"Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree; for purposes of this paragraph, the term "organized education program" means only:

(a) Instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training; and

(b) The acquisition, maintenance, and repair of instructional supplies, teaching aids and equipment.

The term "vocational education" does not mean the construction, acquisition, or initial equipment of buildings, or the acquisition or rental of land.

(Sec. 195(1); 20 U.S.C. 2461.)

"Vocational instruction" means instruction which is designed to prepare individuals upon its completion for employment in a specific occupation or cluster of closely related occupations in an occupational field, and which is especially and particularly suited to the needs of those engaged in or preparing to engage in such occupation or occupations. Such instruction may include:

(a) Classroom instruction;
(b) Classroom related field, shop, and laboratory work;

(c) Programs providing occupational work experiences, including cooperative education and related instructional aspects of apprenticeship programs;

(d) Remedial programs which are designed to enable individuals to profit from instruction related to the occupation or occupations for which they are being trained by correcting what ever educational deficiencies or handicaps prevent them from benefiting from such instruction; and

(e) Activities of vocational student organizations which are an integral part of the vocational instruction, subject to the provisions in § 104.513.

(Implements Sec. 120(b)(1)(A); 195(1); 20 U.S.C. 2330, 2461.)

APPENDIX B

QUESTIONS AND ANSWERS

Many specific questions were raised by interested persons with respect to the implementation of the Act. Some of these issues raise important policy considerations and have legal significance. Recognizing that the goal of a uniform position on these issues can best be achieved through publication in the FEDERAL REGISTER, the Commissioner has decided to issue the following questions and answers as supplementary information to the regulation.

Question No. 1: To what part of the Act does the section 106(a)(5) funding formula apply?

Answer: The section 106(a)(5) funding formula must be applied to all Federal funds distributed under sections 120, 134, 140 and

150. In addition, certain parts of the Act impose other special funding criteria, priorities, and conditions which must be considered. For example, both the work study program (section 121) and cooperative vocational education program (section 122) require that priority in funding be given to areas of high youth dropouts or youth unemployment.

Question No. 2: Is it permissible for the State education agency (SEA) to contract with another agency to fulfill the requirement of full-time personnel being assigned to work to eliminate sex discrimination and sex stereotyping?

Answer: The SEA may contract for personnel to assist the State board in this capacity, but the contract must specify that the personnel will work full-time to eliminate sex discrimination and sex stereotyping from vocational education programs by performing the functions listed in § 104.75. If the personnel are hired under contract, the State agency is as responsible for the performance of the personnel as it would be if the personnel were employed directly by the State board.

Question No. 3: What should the qualifications be of the full-time personnel to eliminate sex bias, sex discrimination, and sex stereotyping?

Answer: Section 104.72(b) requires the State to match the qualifications of the applicants with the responsibilities of the job. The responsibilities are set forth in § 104.75. In addition, the person selected should have a demonstrated commitment to the elimination of sex bias, sex discrimination, and sex stereotyping.

Question No. 4: How can a State department of education legally monitor the personnel practices of local educational agencies who are, for all practical purposes, autonomous?

Answer: Section 104(b)(1) of the Act requires that the full-time personnel to eliminate sex bias monitor the implementation of laws prohibiting sex discrimination. In a State where the local educational agencies have a great deal of autonomy and the State personnel have no authority to enforce changes, the LEA should have no objection to the full-time personnel visiting to observe their personnel practices, make suggestions, and report violations of Titles VI and IX.

Question No. 5: Does the certification contained in § 104.171(g) detract from the requirements in § 104.75(j) which require the full-time personnel to review and submit recommendations on the State plan?

Answer: No. The certification in § 104.171(g) does not preclude inclusion of any comments the full-time personnel wish to make. Under § 104.75(h) and (j), the full-time personnel must make information readily available to the State board and the Commissioner and must review the State plan and submit recommendations on it. Comments on the State plan may be submitted with the certification or at any other convenient time.

Question No. 6: May a vocational education student be appointed to the State advisory council pursuant to section 105(a)(20) of the Act even though the individual will no longer be a student after two years?

Answer: Yes. Since members of the advisory council must be appointed for terms of three years, an appointment held by a student who is involved in vocational education for a maximum of two years would become vacant after the individual's status as a student expired. The appointing body, therefore, would be required to fill the vacancy for the unexpired term (§ 104.92(c)(2)).

Question No. 7: Must the annual program plan provide information on the allocation of Federal funds to each eligible recipient?

Answer: Yes. Section 108(b)(1)(B)(ii) of the Act provides that the annual program plan must "set out explicitly the proposed distribution of such funds among eligible recipients."

Question No. 8: Are there any complaint procedures available to parents, students, and other individuals to the State education agency?

Answer: Although the Act does not require the State to adopt a formal grievance procedure for parents, students, and other individuals, the State may wish to develop procedures for resolving these complaints. These procedures might include specific time limits for investigation and resolution of complaints, an opportunity for the complainant to present evidence to the State educational agency, and the dissemination of information concerning these procedures. In addition, the complaint procedure for violations of Title IX are contained in 45 CFR 86.8(b).

Question No. 9: How must the State make the five-year plan and annual program plan reasonably available to the public in accordance with section 106(a)(9)?

Answer: The State should make the plans readily available in places such as libraries, community colleges, and local school districts. With regard to members of the general public requesting copies of the plans, the State may wish to follow the standards and fee schedule of the Department's regulations under the Federal Freedom of Information Act (Pub. L. 90-23, 45 CFR Part 5).

Question No. 10: At what stage must the State make the plans available to the public?

Answer: Since the public must have some familiarity with the content of the planning documents prior to the public hearing the State should make drafts of the plans available prior to the public hearings.

Question No. 11: When will the Commissioner make the State plans available to the public?

Answer: Under the Department's Freedom of Information Regulations (45 CFR Part 5), "State plan material" is specifically listed in the Appendix as "Generally Available." This means that State plans sent or delivered to the Office of Education, or letters relating thereto, will be available. Therefore, both the five-year State plan and annual program plan will be available to members of the public, on request for the document, as soon as the document is received by the Office of Education in a regional office or the central office. The document will be available on receipt, before the Commissioner's review or approval.

Question No. 12: If the State legislature supports the entire cost (other than tuition payments) of operation of postsecondary area vocational schools, how would the relative financial ability of the institution be established pursuant to section 106(a)(5)(B)(i) of the Act?

Answer: An institution with no local tax base for support would have to calculate its relative financial ability on the amount of funds the State legislature makes available to it.

Question No. 13: Two commenters questioned the appropriateness of participants (other than those representatives specified in section 107(a)(1)) being involved in the development of the plan.

Answer: While a State may involve other participants, only one member of each of the designated agencies, councils, and individuals specified in section 107(a)(1) of the Act may be involved in the development of the plan.

Question No. 14: May the State board design the membership of the section 107 planning group in such a way that the State educational agency's personnel constitute a majority of the voting membership?

Answer: Membership on the planning group is limited to one official representative for each of the agencies, councils, and individual categories specified in section 107(a) (1) of the Act. One person may be the State agency's representative for more than one of the ten categories if that State agency has multi-responsibility. There is, however, no requirement for a vote by each representative.

Question No. 15: Should CETA be included "among the various institutions of the State" under section 107(b) (2) (A)?

Answer: No. CETA is not an institution for purposes of § 107(b) (2) (A). Through the coordination efforts in § 104.188 the State board will have data on programs conducted under CETA and will consider these data in its planning.

Question No. 16: What basis should the State use to determine if a shift in funding for programs in secondary schools has occurred in accordance with § 104.315?

Answer: The State should rely on the 601T forms submitted to the Office of Education for fiscal years 1975 and 1976. These reports should specify the amounts spent at the secondary level. If projected Federal expenditures for programs in secondary schools in either fiscal year 1978 or 1979 are not within 95 percent of the figures reported for fiscal years 1975 or 1976, then a justification must be set forth in the five-year State plan.

Question No. 17: How may a State comply with the section 107(a) (2) and section 108 (a) (2) requirement to provide sufficient public notice for public hearings on the five-year plan and annual program plans?

Answer: The State should mail invitations to organizations and individuals in the State having an interest in vocational education and civil rights, publish notices of the hearings in major newspapers, and place announcements on television and radio as appropriate throughout the State, beginning 30 days prior to the hearings.

Question No. 18: Must the section 110 minimum percentages for the national priority programs (handicapped, disadvantaged, post-secondary) be computed against the allotment under section 102(a) prior to the 80/20 split for subparts 2 and 3?

Answer: No. Regardless of whether the computation is made prior to or after the 80/20 division, the minimum percentages must be based on the total allocation, not just the 80 percent for subpart 2 or the 20 percent for subpart 3.

Question No. 19: Must the State pay exactly 50 percent, at least 50 percent, or up to 50 percent for the three national priority programs in section 110 of the Act?

Answer: The State must pay at least 50 percent of the cost of vocational education programs for the national priority programs in section 110 of the Act (§ 104.303).

Question No. 20: May a State use local funds earmarked for local administration as part of the State's matching share for State administration under section 111(a) (2)?

Answer: No. The State matching share must be earmarked for State administration, not local administration. The non-Federal source of funding for State administration, however, may be generated at either the State or local level.

Question No. 21: May a State use tuition fees to meet the statutory matching requirements?

Answer: No. In accordance with § 100b.58 of the General Education Provisions Regulations, tuition and fees collected may not be included as part of the Federal or non-Federal share of expenditures under any Federal program.

Question No. 22: Does the § 104.321 provision of maintenance of fiscal effort allow the State to use a per student basis one year

and then change and use aggregated cost the next year?

Answer: Yes. The State may annually select either of the two bases. Local educational agencies and postsecondary institutions may also select either of the two bases.

Question No. 23: To determine maintenance of fiscal effort, will the Commissioner compare the amount between the present and previous year or between the preceding and second preceding year?

Answer: In accordance with § 104.322, the Commissioner will determine maintenance of effort by comparing the preceding year to the second preceding year.

Question No. 24: Are the evaluations of programs conducted by the State board available to the general public?

Answer: Yes. The annual accountability report, which is available to the public, must contain a summary of the evaluations of programs conducted by the State.

Question No. 25: What does the requirement in section 120(b) (2) of the Act that the State board make a specific finding in each instance of funding for stipends in section 120(b) (1) (G) of the Act pertain to?

Answer: Each eligible recipient in the State desiring to provide stipends to students shall include an assurance in its local application to the State board that students to receive stipends have acute economic needs which cannot be met due to inadequate funding in other programs (§ 104.573).

Question No. 26: Section 104.402 of the regulation gives the State board wide latitude and discretion in regard to the collection and reporting of data to evaluate the effectiveness of its programs. Will it be possible to aggregate across all States the data thus collected and meet the reporting requirements of section 112(b) of the Act?

Answer: Aggregation of the data on program completers and leavers required by section 112(b) (1) (B) of the Act will be assured by use of the uniform definitions and information elements and the instructions and standards required by §§ 104.404 (d) and 104.405 of the regulation. As for the evaluation required by section 112(b) (1) (A) of the Act, it is the Commissioner's preference that, in view of the increased burden of evaluation under the new Act and the as yet undetermined nature of the new national reporting and accounting system mandated by section 161 of the Act, the State board should be given considerable latitude. After a year of experience with the new Act, it may be found desirable to reconsider the reporting requirements.

Question No. 27: What programs are eligible for funding under the assurance which specifies "of significant assistance to individuals enrolled in making an informed and meaningful occupational choice as an integral part of a program of orientation and preparation"? At what grade level may these programs be offered?

Answer: Prevocational or exploratory programs which are designed to be of significant assistance to individuals enrolled in making an informed and meaningful occupational choice may be funded under the Act. Specifically, programs in industrial arts may be supported with funds under section 120 of the Act beginning at the secondary level (as defined by the State). Exemplary and innovative programs under section 132, consumer and homemaking programs under section 150, and vocational guidance under section 134 may be provided at all levels.

Question No. 28: May subpart 3 funds for program improvement and support services be used for the programs for the special populations described in section 120(b) (1) (L)?

Answer: No. The program outlined in section 120(b) (1) (L) is included among the purposes of the subpart 2 basic grant and, therefore, must be funded under subpart 2.

Question No. 29: May a State satisfy the requirement in § 104.502(b) by providing regular vocational education programs without special courses or instruction in how to seek employment for the special populations listed in § 104.621?

Answer: No. The State must provide these special populations with vocational education programs which offer special instruction in how to seek employment and placement services for graduates.

Question No. 30: Is a correctional institution of the State eligible to receive funds?

Answer: Yes. Under section 195(13) only LEA's or post-secondary institutions are "eligible recipients." The State or eligible recipient may, however, enter into an arrangement with the agency administering correctional institutions for the provision of vocational training.

Question No. 31: May funds available for establishing day care centers be used for the establishment of centers in schools? May these centers also be used as a laboratory for training students for employment in child care occupations?

Answer: Yes. The day care centers may be established in the schools and may serve as a learning laboratory for training students for employment in child care occupations.

Question No. 32: May a State use section 130 funds to support research activities in LEA's?

Answer: Yes. Section 130 authorizes the Commissioner to allocate funds to the States for, among others, the purposes of section 131. Section 131(a) authorizes the State to support a research coordinating unit (RCU) for research by the RCU itself or for contracts by the RCU for research. Thus, the RCU may enter into a contract with the LEA for research.

Question No. 33: Does the Act require the State to match funds for research, or for exemplary projects, or curriculum development projects, on a program-by-program basis?

Answer: No. Section 111 of the Act does not require a program-by-program matching by the State in programs under sections 130, 131, 132, or 133. See § 104.302 of the regulation as to matching on a State-wide basis and the exceptions.

Question No. 34: May States use funds under § 104.772 to train and upgrade high school counselors to enable them to serve vocational education students better?

Answer: Yes. If the State chooses to use its funds for this purpose, it must incorporate this type of training in its approved five-year State plan and annual program plan for vocational education. Sections 104.772 and 104.773 of the regulations address this point.

Question No. 35: May a State use its vocational education personnel training funds to train interpreter-tutors to work with deaf students of vocational education?

Answer: This use of the funds would be allowable if it is set forth in the approved five-year State plan and annual program plan for vocational education.

Question No. 36: May an LEA use funds under subpart 4, Part B of the Act, "Emergency Assistance for Remodeling and Renovation of Vocational Education Facilities" for new construction?

Answer: No. Section 191 of the Act is clear that this new program is for "modernization of facilities and equipment and the conversion of academic facilities necessary to assure that such facilities will be able to offer vocational education programs which give rea-

sonable promise of employment." The same section refers to "remodeling and renovation" of facilities. There is no authorization in subpart 4 for construction of new facilities. Use of funds for "construction of area vocational education facilities" is authorized in section 120(b)(1)(E).

Question No. 37: Are private, non-profit rehabilitation centers and workshops eligible for emergency remodeling funds under subpart 4?

Answer: No. Section 191 of the Act states, as eligible, only "local educational agencies in urban and rural areas."

Question No. 38: Are leased premises eligible for emergency assistance for remodeling under subpart 4?

Answer: Yes. The Act does not state whether leased premises are eligible for emergency remodeling assistance. Determinations will have to be made on a case-by-case basis. Facilities leased by an LEA under a 99-year lease should be treated as facilities owned by an LEA. Where facilities are leased on a short-term lease, the LEA might not score points under criterion 9 (§ 105.504(b)(9)), as use of funds to renovate premises on a short-term lease might not be economical.

COMMENTS AND RESPONSES

The following comments, suggestions, and criticisms were submitted in writing in response to the proposed rules. After the summary of each comment, a response is set forth stating the changes which have been made in the regulations or the reasons why no change is deemed necessary or appropriate. The comments are grouped based on the sections affected, arranged in sequence.

PART 104—STATE VOCATIONAL EDUCATION PROGRAMS

SUBPART 1—STATE ADMINISTRATION

§ 104.2 *Purpose:* Meaning of "where necessary maintain."

Comment. A commenter pointed out that one of the purposes of the new Act is to assist the States "in extending, improving, and, where necessary, maintaining existing programs of vocational education"; that the new Act specifically inserted "where necessary" in order to give the maintenance of existing programs a lesser priority than that given to expanding and improving programs; and that the proposed regulation fails to carry out that intention. Another commenter asked for a definition of "where necessary."

Response. In section 101 of the Act, Congress set forth the purposes of the new Vocational Education Act. The regulation, in § 104.2, repeats the language of section 101 exactly, leaving "extending" and "improving" programs of vocational education ahead of "maintaining" existing programs, and leaving in the phrase "where necessary" as modifying "maintaining existing programs." The Conference Report (Report No. 94-1701, p. 214) states: "The determination of necessity is to be made by appropriate State and local officials. The phrase is not intended to authorize the Commissioner of Education to apply a strict litmus test of absolute necessity before an on-going program can be funded. However, it is intended to encourage States to use their limited amount of Federal funds to invest in the often-expensive start-up costs of new programs." The maintaining of existing programs should be the subject of study in the preparation of the five-year State plan and the annual program plan and accountability report. Since the maintaining of existing programs is such a broad subject, no definition of "where necessary" has been attempted. No change is made in the regulation.

§ 104.2 *Purpose:* "Youth with specific learning disabilities."

Comment. A commenter recommended that § 104.2(a)(4) of the statement of "purpose" be amended to change the phrase "those with special educational handicaps" to "youth with specific learning disabilities."

Response. The "purpose" as set forth in § 104.2 is taken verbatim from section 101 of the Act. This statement of purpose was not changed by the Technical Amendments, Pub. L. 95-40. The Technical Amendments, however, include in the definition of handicapped, "persons with specific learning disabilities." A corresponding change is made in the definition of "handicapped" in the Appendix to Part 104 of the regulations.

STATE BOARD

§§ 104.31-104.33 *State board staff.*

Comment. A commenter recommended that the regulation include requirements for an adequate State board to carry out its responsibilities and functions, including a full-time director.

Response. The recommendation is accepted. A section (§ 104.34) is added to require the State board to provide for a State staff sufficiently qualified and in sufficient number to administer properly the State's program of vocational education. Through oversight this provision was omitted from the NPRM. Section 104(a) of the Act places great responsibility on the State Board for administration and leadership. The requirement for adequate staffing by the State board is entirely appropriate.

§ 104.32 *State board: Definition of the term "coordination."*

Comment. Several commenters suggested that the regulation be amended to define the term "coordination." These comments also inquired: (1) If the responsibilities of the State board for coordination of the development of policy and the development of the State plans were intended to limit the authority of the State board, and (2) If the State board is to limit its coordination activities to the groups identified in clauses (A) through (J) of section 107(a) of the Act.

Response. In requiring the State board to coordinate the development of policy and the development of the State plans with the agencies, councils, and individuals identified in section 107(a) of the Act, it was the intent of Congress to establish a mechanism to strengthen the planning function of the State board, rather than limit its authority. To carry out the mandate of section 104(a) of the Act, the State board convenes the planning group, established by section 107(a) of the Act, for at least three meetings during each fiscal year concerning the development of the annual program plan and accountability report and for at least four meetings concerning the development of the five-year State plan.

Although only representatives of the agencies, councils, and individuals identified in section 107(a) of the Act must participate in the decision-making activities of the planning group, the State board is responsible for coordinating the State plan with any group or individual having an interest in vocational education. Section 107 of the Act requires that the State board hold public hearings to provide every interested person or group the opportunity to participate in the development of the State plan. No change is made in the regulation.

§ 104.32 *Responsibilities of the State board.*

Comment. A commenter suggested that it may be misleading to list only the coordi-

native responsibilities of the State board in § 104.32 of the regulation. To correct this situation, it was suggested that the regulation be changed to read, "The State board's responsibilities shall include but not be limited to * * *."

Response. This recommendation is accepted. Section 104.32 of the regulation follows very closely the language of section 104(a) of the Act which sets forth the (non-delegable) responsibilities of the State board. In order to assure that the regulation provides a clear interpretation of the intent of the Act, the first sentence of § 104.32 of the regulation is amended to read, "The responsibilities of the State board include (but are not limited to):"

Comment. A commenter expressed the view that it was the intent of Congress to have the inspiration for the planning of the vocational education programs arise from the local educational level where the needs of the student are "best seen and cared for."

Response. Each local educational agency and postsecondary educational institution that participates in the vocational education program submits an application to the State board. The State plan is formed, in part, from the vocational education programs that are identified in the applications from local educational agencies and postsecondary institutions. Since the planning group is responsible for assuring that the State plan provides a comprehensive and coordinated vocational education program that is responsive to the total vocational education program needs of the State, no change is made in the regulation.

§ 104.32(d) *State board consultation with the State advisory council.*

Comment. In noting that the regulation specifies that members of the State board are responsible for consulting with the State advisory council, a commenter suggested that it is also appropriate for the staff of the State board and the staff of the council to consult frequently on matters of mutual concern.

Response. Section 104.32(d) of the regulation is consistent with section 104(a)(1) of the Act which requires that the State board consult with the State advisory council regarding the planning and reporting of the State's vocational education programs. The regulation reflects the intent of Congress, which was to establish a procedure to ensure the participation of the State advisory council in the development of the State plans and accountability reports. It is not the intent of the Act nor the regulation to preclude, discourage, or hamper in any way the exchange of formal or informal communications between the State board and the State advisory council, or between the staffs of the board and the council. Consultation between the two staffs need not be required in the regulations. No change is made in the regulation.

FULL-TIME PERSONNEL AND FUNCTIONS TO ELIMINATE SEX DISCRIMINATION AND SEX STEREOTYPING

§§ 104.71-76 *More specific guidance on full-time personnel.*

Comment. Many commenters requested more specific language in the regulations on the designation, support, and functions of the full-time personnel to eliminate sex bias. All felt that too many decisions were left up to the individual States and that the States need more guidance, particularly in this area.

Response. Although many decisions (such as placement of the personnel within the

State structure, the number of personnel necessary) will be left to the States to make, changes have been made in §§ 104.71-76 of the regulation in an attempt to strengthen and clarify the activities under these sections. These changes are spelled out in more detail in the following comments and responses.

§ 104.72 "Employment/designation" of full-time personnel.

Comment. A commenter felt that the words "designation" and "assign" in this section convey the impression that the State education agency must utilize personnel already employed by the agency to fill the positions under this section. Suggested instead was the use of the terms "employment/designation" and "employ/assign."

Response. The use of the terms "designation" and "assign" in § 104.72 is not intended to indicate that current State agency personnel must be used to fill the positions under this section. There is no indication in either the Act or legislative history that such an interpretation is valid. In addition, the joint terms suggested by the commenter ("employment/designation" and "employ/assign") are not seen as clarifying the meaning. However, in light of other comments received, further clarification appears necessary; therefore, the terms "designation" and "assign" have been changed to "selection" and "select."

§ 104.72 Full-time personnel/personnel working full time.

Comment. A number of commenters noted the difference between the language of the Act requiring "full-time personnel" and the language of the regulation requiring "personnel to work full time" on sex bias issues. Several of these commenters have requested that the language of the regulation be changed. Others, however, have opposed such a change on grounds that it might lead to hiring personnel to perform these functions on a less than full-time basis.

Response. The change of language in the regulation to "personnel to work full time" is intended to clarify the Act. It is apparent from the legislative history that Congress intended that the State have at least one professional working full time on the elimination of sex bias and sex stereotyping in vocational education rather than a person employed full time but working less than full time on the elimination of sex bias. Although personnel may be placed in any unit the State chooses, the professional personnel must work full time on elimination of sex bias and sex stereotyping in vocational education. Thus no change is made in the regulation.

§ 104.72 Placement of full-time personnel.

Comment. One commenter noted that neither the Act nor the regulation mandates the full-time personnel hired under this section to be employed by the State department of education, vocational education division. Therefore, this commenter interpreted this to mean that it is not necessary for personnel filling these positions to be employees of the State vocational division.

Response. The commenter is correct in this interpretation. It appears from the legislative history that Congressional intent was not to limit the State in placing this personnel within the State structure. Page 215 of the Conference Report (No. 94-1701) states that there is no intention "that the State must assign such personnel to the State board." Each State may decide where the personnel will function best. The personnel may operate within the vocational division or may work from another area. However, the personnel must work full time on elimination of sex bias and sex stereotyping in vocational edu-

cation. No change is made in the regulation.

§ 104.72 Criteria for selection of full-time personnel.

Comment. Many commenters expressed the concern that, unless criteria for the selection of the full-time personnel were set forth by the regulation, the positions might be filled with persons who are not qualified or who might compound the bias problems. The criterion most often suggested was that the persons chosen for these positions have demonstrated a commitment to the elimination of sex bias in educational programs. Other qualifications suggested include knowledge of sex bias problems and issues, leadership capability, vocational education background, creativity, patience, and determination. Several commenters felt that the States should be required to advertise the position widely and to assure that it be open to all applicants. One commenter proposed that there be a selection committee to be made up of individuals with knowledge of sex bias issues.

Response. The recommendation is accepted in part. The regulation will not prescribe specific criteria for the States to use in selecting the full-time personnel. As in selection of other State personnel, the criteria will vary from State to State; however, a paragraph has been added requiring that the States match the qualifications of the applicants with the responsibilities of the job.

§ 104.73(a) Definition of sex bias.

Comment. Several commenters expressed concern over the proposed definition of "sex bias." The difficulty stems from the statement that "as used in the Act and the regulations, sex bias . . . includes sex discrimination." One commenter remarked that bias and discrimination are not the same. Others were concerned that "sex stereotyping" had been left out. These commenters suggested that "sex stereotyping" be added wherever "sex bias" is used in the regulations or that "sex stereotyping" be added to the final sentence in the definition on the use of "sex bias" in the Act and regulations. Still others favored discarding the proposed definition for a new one.

Response. The recommendation that the definition of sex bias be modified is accepted. The final sentence of § 104.73(a) is deleted since it is confusing rather than clarifying. In addition, the use of the terms "sex bias," "sex discrimination," and "sex stereotyping" are clarified throughout the regulations.

§ 104.74 \$50,000 Minimum.

Comment. Several persons commented on the \$50,000 set by the regulation as a minimum for support of the full-time personnel. The comments were evenly divided regarding the words "at least \$50,000." Some commenters felt it important to stress that this is a minimum, while others felt that the \$50,000 is a specific amount set by the law to be no more and no less.

Response. There is nothing in the Act to prevent a State from spending more than \$50,000 to support the full-time personnel, but a State may not spend less than that amount. To emphasize this point, the language of the regulation has been amended to read "not less than" \$50,000.

Comment. A few commenters felt that the salary items (§ 104.74(b) (1) and (2)) should be combined to read "salaries for full-time staff," without making a distinction between professional and support staff.

Response. Section 104(b) (1) of the Act is interpreted to mean that the professional staff, but not necessarily the support staff, must work full time on the functions set forth in § 104.75. The regulation does not mandate that clerical and other support staff

work full time in this area. Thus, the question whether support staff must work full time is left to the discretion of the State. No change is made in the regulation.

§ 104.74(b) Allowable activities.

Comment. Many commenters were concerned that § 104.74(b) was too restrictive regarding use of the \$50,000. These commenters requested that items be added to the list of allowable expenditures, such as publications, workshops, and dissemination of information.

Response. The proposed language in § 104.74(b) is reasonable in that it provides sufficient guidance to the States on the use of funds while being broad enough to include the additional list of activities suggested. The measure of a legitimate expense under this section is the degree to which it relates to the support of the personnel in carrying out the functions set forth in § 104.75. No change is made in the regulation.

§ 104.75 Minimum requirements for accomplishing "sex bias" functions.

Comment. A number of commenters felt that the regulation should spell out the minimum requirements to accomplish the functions listed in § 104.75. They felt that the full-time personnel needed specific guidance in fulfilling their responsibilities. Specific suggestions include development of a complaint process, a strengthened public information component, an annual report on the status of women in vocational education programs, and the use of the Title IX self-evaluation.

Response. Although the functions listed in § 104.75 provide a framework within which the full-time personnel will work, some of the above suggestions offer more guidance and have been included. Requirements have been added to emphasize the public information function of the personnel, especially in assisting the State board in publicizing the State plan hearings. Also included are references to the Title IX complaint process and self-evaluation. Other more specific suggestions were not included, since the full-time personnel will develop a plan to implement the functions which will address the needs of the particular State, and further guidance was felt unnecessary.

§ 104.75(a) Reduce sex bias and sex stereotyping.

Comment. One commenter suggested that "sex bias" be added to the language in subsection (a) of § 104.75 in addition to sex stereotyping.

Response. The recommendation is accepted. To clarify the regulation, "sex bias" has been added.

§ 104.75(d) Review of distribution of grants and contracts.

Comment. A number of commenters felt that review of the distribution of contracts as well as grants should be included in this function.

Response. The recommendation is accepted. Since the State's research, exemplary, and curriculum development programs will be conducted through contracts and since these areas also emphasize elimination of sex bias and sex stereotyping, it appears that review of contracts as well as grants would comply with Congressional intent.

§ 104.75(h) Availability of information.

Comment. Several commenters recommended that the language of this subsection be changed to require the full-time personnel to make information developed pursuant to the statutory functions available to the groups listed in § 104.75(h) through the State board rather than supplying the information to the board as well as to the other groups.

Response. The regulation is consistent with the Act which states that the information will be made available to the State board, the National and State Advisory Councils on Vocational Education, the State Commission on the Status of Women, the Commissioner, and the general public. In addition, making information available to the general public through the State board would be difficult. Therefore, no change is made in the regulation.

STATE ADVISORY COUNCIL

§ 104.91 State advisory council establishment.

Comment. Commenters pointed out that the regulation does not conform to the Act regarding the appointment of the State advisory council in the case of States in which the members of the State board are elected. The regulation refers only to the "State board" while section 105(a) of the Act uses the term "State board of education."

Response. While this appears to be an inconsistency, the legislative history supports the reference to the State board designated or created by State law as the sole State agency responsible for the administration of vocational education or for supervision of the administration of vocational education in the State. In a great majority of the States, the State board of education serves also as the State board for vocational education. There appears to be no reason for denying to an elected State board for vocational education the authority to make the appointments to the State advisory council. Therefore, the broader term "State board" is not changed in the regulation.

§ 104.92(a) State advisory council membership.

Comment. Several commenters suggested that additional groups should be represented on the State advisory council. The additional group representatives suggested were: State planning agencies, adult education, homemaking, college career planning and placement services, State's agency on aging, and the planning and coordinating agency for postsecondary education.

Response. Since categories mandated by section 105 of the Act number twenty, many of which imply multiple representation, it appears unwise to require additional appointments, thereby making the councils too large, unwieldy, and costly to operate under existing budget limitations. Councils are urged to obtain input from interested groups, not directly represented by membership, through their evaluation and public hearing process. No change is made in the regulation.

§ 104.92(a) Women on State advisory councils.

Comment. Many commenters suggested that § 104.92(a)(17) include language to the effect that at least two women be required to fulfill the requirement. While the wording of the regulation is taken directly from the Act, it was clear that the Congress intended more than one woman to fill this category. Unless the regulation is so stated, there is danger of misinterpretation at the State level.

A commenter also recommended that the phrase "one or more persons" used in the sentence having reference to minority groups be changed to "women," which is the statutory language.

Response. The recommendation relating to the change in wording of § 104.92(a)(17) from "one or more persons" is accepted.

Although a number of categories listed in this regulation use plural words, the determination of the actual number necessary for each category should be left to the appointing authority rather than have the reg-

ulations specify an exact number. Specifically, in the case of category (17), whether one or two women are appointed may depend on the number of women already appointed to other categories. The Commissioner, however, encourages the States to appoint at least two women to fulfill the requirement in category (17). No further change is made in the regulation.

§ 104.92(b)(3) Appropriate representation.

Comment. A great many commenters pointed out the need to define "appropriate representation," especially as it relates to the representation of women on the council. It was recommended that "appropriateness" be based on such criteria as the proportion of women and minorities in the State's general population, the State's work force, their representation in vocational education programs, or a combination of such factors. Further, it was suggested that the membership must include persons with an understanding about and commitment to remedy the consequences of sex and minority discrimination.

Response. The recommendation is accepted. While specific quotas are not prescribed, the final regulation includes a statement intended to implement § 104.92(b)(3). In order to reflect effectively the diverse interests and needs of the general public served by the Act, the statement makes clear that the appointing authority shall appoint to the council a significant proportion of women, racial and ethnic minorities, and representatives of geographic regions in the State. The Commissioner considers the term "appropriate representation" to be representation which generally reflects the percentage of women or minorities in the population of the State or the percentage of women or minorities in the work force of the State.

§ 104.93 Liaison with State Advisory Panel for Handicapped.

Comment. Two commenters suggested a function of the State advisory council on vocational education be added requiring "appropriate liaison and coordination activities with the State Advisory Panel for the Handicapped."

Response. It is agreed that to insure consistency in planning and program implementation, liaison and coordination between the two agencies are essential. However, as a result of the Technical Amendments, § 104.93(f) has been amended to include "special education" as one of the programs to be assessed for its part in the consistent, integrated, and coordinated approach to meeting the employment and training needs of the State. This provision, along with the required representative of the handicapped on the State advisory council, is intended to assure the necessary coordination. No change is made in the regulation.

§ 104.93(a) Council certification.

Comment. A commenter requested the deletion of the last sentence of § 104.93(a) since this appeared to be a duplication of the certification required by the council representative in § 104.171(b)(2).

Response. In addition to the certification by the council representative relating to the opportunity to participate in the planning process, the council itself must be consulted in the plan development process. Thus, the council has two avenues for involvement in the planning, with the latter being a greater commitment than that afforded other agencies. Since this procedure is statutorily mandated, no change is made in the regulation.

§ 104.93(d) State board evaluation.

Comment. A commenter objected to the word "assist" and stated that the law used the word "consult."

Response. Section 112(b) of the Act says that the State shall "consult" with the council and that the council shall "assist" the State in developing the plans. Since the regulation (§ 104.93(d)) uses the word "assist" in relation to assisting the State board, no change is made in the regulation.

§ 104.93 SACVE function—Evaluation.

Comment. Commenters suggested that the regulation provide additional direction with regard to certain of the council functions including the following: freedom to conduct whatever independent evaluation it chooses, requirement that data requested from the State board not be denied, evaluation by the council be of State board programs and not LEA programs, the time, frequency and use to be made of the "employment needs" assessment, compatibility of council findings with State-wide goals of State board, relationship of councils to State Occupational Information Coordinating Committee and the State Manpower Services Council, kinds of technical assistance to be given local advisory councils and input into the evaluation process by the local councils.

Response. While the comments have merit, the regulation intentionally provides considerable flexibility to councils in dealing with the newly assigned functions and responsibilities. If problems persist, additional technical assistance may be provided by the staff of the National Advisory Council on Vocational Education or the Office of Education. No change is made in the regulation.

§ 104.94 Public meetings.

Comment. A commenter suggested that guidelines be provided for public meetings and that these meetings be held separately from hearings on State plans.

Response. The requirement for public meetings is well established since this procedure was initiated through the Vocational Education Amendments of 1968. Since the council's public meeting is for a different purpose than the public hearings on the State plans, there is no justification for combining meetings. No change is made in the regulation.

§ 104.95(a) Staff.

Comment. A commenter suggested that professional and technical personnel be required to demonstrate a commitment to equal rights and sensitivity to the needs of populations being served. Another commenter requested deletion of the provision that the personnel not include members of the State board staff.

Response. Even though the qualifications for personnel suggested are desirable, the matter of personnel selection and the qualifications desired is a responsibility of the council. The exclusion of State board staff from serving as council staff is consistent with the Congressional intent of maintaining council independence from the administering agency. No change is made in the regulation.

§ 104.95(b) Compatibility with State policies.

Comment. Two commenters suggested that paragraph 104.95(b) be deleted since it is an infringement on the fiscal independence of the council.

Response. While it is agreed that the council should have independence from the program administrative agency, it was not intended that councils act outside the existing framework of State law and regulations on fiscal matters. Accordingly, the regulation is necessary to establish a degree of responsibility in fiscal matters and compatibility with other State agencies. This is intended to fore-

stall excesses which could bring criticism of the council. No change is made in the regulation.

§ 104.96 Fiscal independence.

Comment. Commenters suggested that the regulation make clear that councils are to be solely responsible for the expenditure and use of their funds. Regulations should provide that if the State board is the fiscal agent, the council must certify that its selection was of its own initiative and not subject to influence by the State board. It was also suggested that the phrase "except as provided in § 104.95(b)" be deleted.

Response. Section 105(f)(2) of the Act provides that the expenditure of council funds is to be determined solely by the council for carrying out its functions. However, as noted in the response under § 104.95(b) above, the councils cannot act outside the existing framework of State law and regulations on fiscal matters. The regulation makes it clear though that the responsibility for designating a fiscal agent is assigned directly to the council. No change is made in the regulation.

§ 104.97 Evaluation report.

Comment. Commenters suggested that the regulation require additional procedures related to the council evaluations, including public comment on the council's evaluation report, review of the content, techniques, and validity of the vocational education data system and assessment of the impact of vocational education programs on women and minorities.

Response. While all the suggestions are worthy of consideration by councils in performing their functions, the Congressional intent, as evidenced by the Act and legislative history, was to allow flexibility in the procedures used by councils. Since the Act requires at least one public meeting, a vocational education data system, and no discrimination on the basis of sex or minority groups, it is reasonable to expect that the council's evaluation will give consideration to these items. No change is made in the regulation.

§ 104.97 Evaluation by State advisory council.

Comment. A commenter recommended that the regulation require a written agreement between the State board and the State advisory council as to the role of each in evaluating programs.

Response. The State board and the State advisory council may wish to reduce their working agreement to writing. However, in the interest of keeping regulatory requirements to the minimum, the Commissioner has decided not to require a written agreement between the State board and the State advisory council. No change is made in the regulation.

§ 104.97 State board comment.

Comment. A commenter suggested that the council's evaluation report be accompanied by comments of the State board and that the response in writing to each recommendation accompany the State plan.

Response. The annual evaluation report is required to be submitted through the State board, at which time the board may attach comments if it desires. However, § 104.241 (b)(2) requires that the accountability report, which must be submitted by the State board, include the board's consideration of each recommendation in the council evaluation report. Therefore, no change is made in the regulation.

LOCAL ADVISORY COUNCILS

§ 104.111 Local advisory councils—representatives of additional groups.

Comment. Many commenters suggested broadening the categories of membership required on the local advisory council so that the categories would be similar to the categories required of membership on the State advisory councils. Others recommended the addition of representatives of specific categories. Specific categories mentioned were: categories (17), (18), (19), and (20) described in § 104.92(a) in relation to the State advisory council; women; racial, ethnic, or major language minorities; private schools; persons knowledgeable in vocational education (but not administration); manpower services; local prime sponsor councils under the authority of CETA; the State agency responsible for data collection; and community based organization. Commenters particularly recommended that the phrase "shall be composed of members of the general public" be interpreted to include appropriate representation of women and minorities.

Response. The recommendations have been accepted in part. Since one of the main purposes of the Act is "to overcome sex discrimination and sex stereotyping in vocational education" and to "furnish equal educational opportunity" (sec. 101(3)) the Commissioner will require that an appropriate representation of women and minorities be represented on the local advisory council. Therefore, a new paragraph has been added to § 104.111 to read as follows:

(d) Each eligible recipient shall establish a local advisory council which has an appropriate representation of both sexes and an appropriate representation of the racial and ethnic minorities found in the program areas, schools, community, or region which the local advisory council serves.

§ 104.111(b) Local advisory council establishment.

Comment. A few commenters asked whether the regulation governing the establishment of local councils precludes the possibility of LEAs establishing local advisory councils on a regional basis with other LEAs. In the same connection, some commenters asked whether one council may serve more than one eligible recipient.

Response. Section 104.111(b) of the regulations is based on section 105(g)(1) of the Act which provides in part that "local advisory councils may be established for program areas, schools, communities, or regions, whichever the recipient determines best to meet the needs of that recipient." The eligible recipient, therefore, has the option to establish a local council which also serves another eligible recipient in the same geographical region of the State. For example, an LEA and a community college in the same region may decide to establish one local council to advise both recipients. This arrangement may be highly desirable for both recipients in the event they are striving for greater articulation between secondary and postsecondary interests. Accordingly, no change is made in the regulation.

§ 104.111(d) Craft committees.

Comment. A commenter pointed out that the regulation implies that only advisory councils would be required at the local educational agency or postsecondary level, despite the fact that advisory assistance through craft committees to each vocationally-funded teacher is considered essential to insure an effective instructional program.

Response. There is no intent to diminish the importance of craft committees. In fact, by making reference in the regulation to "representatives from several craft committees, * * *" the regulation assumes that craft committees are in existence and will be continued. No change is made in the regulation.

§ 104.111(d) General local advisory council.

Comment. A commenter suggested that paragraph (d) of § 104.111 be eliminated since it appears to be in conflict with paragraph (a) wherein eligible recipients are required to establish local advisory councils. It is contended that this paragraph, by suggesting that existing craft committees "may join together" to form an advisory council, takes away from the eligible recipient the responsibility for determining the make-up and method of establishing its council.

Response. The regulation is considered to be merely suggestive of a method of establishing the mandated local advisory council where craft committees or school councils already exist. It is intended to be supplementary to paragraph (a) rather than in conflict with it. No change is made in the regulation.

§ 104.112 Public meeting.

Comment. A commenter suggested the addition of a requirement for the local advisory council to hold not less than one public meeting each year at which time the public is given an opportunity to express views concerning the programs being offered by the local educational agency and the postsecondary educational agency.

Response. While the recommendation has merit, it is not appropriate to assign additional duties to the local advisory council when there is no authority for funding. No change is made in the regulation.

§ 104.112(b) Local advisory council duties.

Comment. Commenters suggested that mandating local advisory councils to "assist" the eligible recipient in developing its application goes beyond Congressional intent and would exert an undue hardship on local educational agencies. Commenters also suggested that local advisory councils be required to take an active role in the evaluation of local programs.

Response. The first recommendation is accepted. Since the Act in section 106(a)(4) (A) uses the word "consultation," the regulation is rewritten to state "consult with" in place of "assist".

With respect to the issue of whether local councils are to conduct evaluations, section 105(g)(1) provides that the local council advise the eligible recipient on the degree to which the courses being offered by the eligible recipient meet current job needs in the area. Although this activity may be viewed as a minor component of program evaluation, it should not be considered the equivalent of evaluation. Furthermore, since the Act does not provide any funding for the local councils, assigning the costly function of evaluation to the local council does not seem appropriate. However, it is expected that local councils will make extensive use of secondary data sources and any relevant evaluations that are made by other agencies. No change is made in the regulation.

NATIONAL OCCUPATIONAL INFORMATION COORDINATING COMMITTEE

§ 104.121 Establishment of the National Occupational Information Coordinating Committee (NOICC).

Comment. A commenter recommended that a section be added, prior to the state-

ment on the State Occupational Information Committee (SOICC), on the establishment of NOICC.

Response. The recommendation is accepted. Although the regulation does not include rules governing NOICC and SOICC, or other rules governing Internal Federal organization, SOICC is described, and for consistency, NOICC is also described. A new § 104.121 on NOICC has been added.

STATE OCCUPATIONAL INFORMATION
COORDINATING COMMITTEE

§ 104.121 *Fiscal agent for State Occupational Information Coordinating Committee.*

Comment. Several commenters recommended that the regulation identify the fiscal agent for the State Occupational Information Coordinating Committee (SOICC). Some of the commenters suggested that the State board for vocational education should be the fiscal agent. One commenter suggested that the Governor should appoint the agent.

Response. The regulation, as written, does not state who the fiscal agent shall be. NOICC, when making funds available to SOICCs, may require the establishment or naming of a fiscal agent. No change is made in the regulation.

§ 104.121 *State Advisory Council involvement with State Occupational Information Coordinating Committee.*

Comment. A commenter, noting that a representative of the SACVE is not named in section 161(b)(2) of the Act as a member of the SOICC, recommended that the regulation encourage SACVE involvement in the development of the State's occupational information data system which SOICC will develop and SACVE will use.

Response. The Act (section 161(b)(2)) and the regulation (§ 104.121(b)) set forth the required membership of SOICC. SOICC officially will be made up of representatives of only the four agencies named. Additional involvement with individuals and agencies may take place. No change is made in the regulation.

§ 104.121(c) *Representatives on State Occupational Information Coordinating Committee.*

Comment. A commenter suggested that the Governor, rather than the respective agency, should appoint the agency's representatives on SOICC. Another commenter suggested that staff represent the State Manpower Services Council rather than a member of the Council. Another recommended that the chief executive officer be the representative. Others suggested that the Governor should appoint additional members such as representatives of the CETA prime sponsor, guidance and counseling personnel, and career education personnel.

Response. Section 161(b)(2) of the Act states that SOICC shall be composed of a representative of each of four designated State agencies; § 104.121(b) carefully follows the Act. In paragraph (c) it is stated that the "representatives shall be selected by the respective State board, agency, or council." The Commissioner believes this is the proper interpretation of the word "representative," i.e., a person chosen by the group he or she represents. The Commissioner also believes that the representatives of the four designated groups should make up the entire voting membership of SOICC. The State might, however, appoint other observers or non-voting members. Therefore, no change is made in the regulation.

GENERAL APPLICATION

§ 104.141(c) *General application amendment.*

Comment. A commenter questioned the provision of § 104.141(c) that amendments to the general application be made only if and when "provisions of section 106 of the Act are changed or expire." For example, it was suggested that if a State changes its fiscal control and accounting procedures under assurance (7), this should be reflected by amending the general application.

Response. The assurances are comprehensive in coverage and obligate the State to adhere to the provisions of the general application in the future. Hence any change in procedures by a State would also be subject to compliance with the assurance on file, and no amendment to the general application is necessary. At such time, however, that a change in procedures violates the assurances of the general application, the State should notify the Commissioner accordingly. No change is made in the regulation.

§ 104.141(e) *Procedures to carry out assurances.*

Comment. A commenter stated that the procedures to be included in the five-year State plan for assurances 4, 5, 9, and 10 are not mandated in the Act, and that the requirement is inconsistent and arbitrary since procedures are not required for other assurances. The commenter suggested that the requirement be deleted.

Response. Section 109 requires determination by the Commissioner that adequate procedures exist "to insure that the assurances of the general application" will be carried out. Accordingly, it was determined that assurances 4, 5, 9 and 10 require a description of procedures in order for the Commissioner to approve a plan as being in compliance with the law. No change is made in the regulation.

§ 104.141(f)(4)(A) *Consultation with Prime Sponsor.*

Comment. A commenter recommended revision of § 104.141(f)(4)(A) to include a representative of prime sponsors in those areas where there is a prime sponsor.

Response. Section 104.141(f)(4)(A) provides that the annual application be developed in consultation "with representatives of the educational and training resources available in the area." While prime sponsors are not specifically named, they are certainly recognized as a training resource and should be consulted. No change is made in the regulation.

§ 104.141(f)(5) *Consistency with the Handicapped Act.*

Comment. A commenter suggested the addition of "(C) have the State vocational education plan be fully consistent with the State plan under the Education for All Handicapped Children Act of 1975 and the Federal regulations under that Act."

Response. Section 104.141(f)(10) restates the Act and requires that funds used for programs for the handicapped be consistent with the State plan under the Education of the Handicapped Act, which includes the Education for All Handicapped Children Act and the regulations under that Act. Therefore, the suggested phrase is a duplication. Also, a new regulation, § 104.5 has been added which cross-references the requirements in Part B of the Education of the Handicapped Act. Each State education agency should read the relevant regulatory provisions in 45 CFR Part 121a since those regulations provide the specific rules which govern the expenditure

of Federal vocational education funds for handicapped children within the State.

§ 104.141(g) (Renumbered § 104.141(f)(11))
Assurance of cooperation with NCES.

Comment. Several commenters suggested that the assurance in § 104.141(g) be deleted since there is an inconsistency with the assurance in § 104.141(f)(3) which requires supplying information to the Commissioner. It was contended that the Administrator of the National Center for Education Statistics (NCES) should get any information needed from the Commissioner. One commenter indicated that this assurance is a duplication and, in fact, may cause great confusion in terms of the report that is collected. Two of the commenters suggested the regulation was more stringent than the Act in using "shall assure" rather than the Act language "shall cooperate."

Response. Section 161(a) places responsibility for operating the national vocational education data reporting and accounting system with the Administrator of NCES, after jointly developing with the Commissioner the information elements and uniform definitions. Accordingly, the Commissioner believes it is essential to require an assurance that the State will cooperate with NCES in supplying the data jointly agreed to be collected under the system. No change is made in the regulation.

§ 104.141(h) (Renumbered § 104.141(f)(12)),
Indian participation.

Comment. Several commenters questioned the inclusion of the assurance in § 104.141(h) since this is not contained in the law and suggested it be deleted. Other commenters proposed revised language for clarification that the State board does not allocate funds directly to Indian tribal organizations.

Response. Because of the potential for excluding Indians from the regular vocational programs, the recommendation for revision is accepted and the assurance in § 104.141(f)(12) will now read:

"The State board shall also assure that students served by Indian tribal organizations applying for or receiving funds under the Commissioner's discretionary programs, under the authority of section 103(a)(1)(B) of the Act, shall be afforded the opportunity to participate in vocational education programs administered by the State.

DEVELOPMENT OF FIVE-YEAR STATE PLAN

§ 104.161 *Development of five-year State plan.*

Comment. A commenter recommended that consideration be given to more appropriate planning and management procedures. The opinion was expressed that the planning process suggested is completely outdated, and that learner-oriented goals for vocational education should be used instead of goals based on employment needs. Further, if the legislation stressed what outcomes are desirable, States could use their own discretion as to how to achieve these outcomes.

The same commenter recommended that every effort be made to secure additional funding for planning and evaluation purposes and also make provision to compensate the representatives involved in the planning group.

Response. The language of the regulation concerning the planning process follows closely the Act. The State may, of course, employ planning procedures beyond those specified so long as the State plan requirements are met. The matter of changing the planning procedures and obtaining additional funding must be resolved through the legislative process. No change is made in the regulation.

§ 104.161 Time for development of a model plan.

Comment. Several commenters indicated that the period of time for development of plans is too short. One commenter suggested that the five-year State plan be revised by July 1, 1978, on a one time basis, since lack of experience and the short deadline for the initial plan will make it difficult for States to prepare a model plan by July 1, 1977.

Response. The Commissioner has no authority to waive the requirement of a complete five-year State plan by July 1, 1977. While States may not be able to develop an exemplary plan initially, the minimum requirement must be met. It is anticipated that States may wish to make amendments to improve the plan during the first year. In addition, the updating procedures in the annual program plan provide a mechanism for change and improvement of the five-year State plan. No change is made in the regulation.

§ 104.162 Local Educational Agency (LEA) input to State plan.

Comment. A commenter suggested that, while use of a representative group for planning is a good procedure, input and data from local educational agencies should be used as one of the key bases for formulating the State plan.

Response. While not specifically so outlined, Sections 107 and 108 of the Act rely heavily on input and data from eligible recipients in formulating both the five-year State plan and the annual program plan. The plans in fact constitute an aggregation of the State's total effort in vocational education, and the State must reply on the eligible recipients for this date. No change is made in the regulation.

§ 104.162 Appointing authority for selecting representatives.

Comment. Commenters objected to the requirement that the appointing authority under State law designate the representatives for § 104.162(e), a local school board; § 104.162(f), vocational education teachers; and § 104.162(g), local school administrators. These objections were based on the commenters' interpretation that these appointments might be political appointments by the Governor. These commenters expressed a preference for a requirement that each of the agencies appoint its own representative.

Response. The language of the Act reads: "as determined by State law." This language was subject to interpretation and was construed to mean the appropriate appointing authority in the State. Accordingly, the language "as designated by the appropriate appointing authority" was added to § 104.162(e) through (g) to assign the responsibility for appointing these three representatives to the individual or State agency (i.e., the Governor or the State board) having authority to make appointments under State law. No change is made in the regulation.

§ 104.162 Representation on planning group.

Comment. A number of commenters suggested additional representatives and rationale for their inclusion in the development of the five-year State plan. The list included: Four-year institutions of higher education, State educational agency responsible for education programs for the handicapped, State agency on aging, State agency administering the vocational rehabilitation program, and State Commission on the Status of Women.

Response. The Act is specific relative to membership on the planning group. It is inappropriate for the regulation to require additional representation on the planning

group beyond the representatives of the ten groups specified in Section 107(a)(1) of the Act. States may involve the above groups and other groups it wishes to include in the planning process; however, only those ten groups designated by the Act constitute the decision-making group. Other groups are encouraged to provide input either directly to the planning group or through the public hearing process. No change is made in the regulation.

§ 104.162 Number of representatives on the planning group.

Comment. Two commenters raised the question of whether it would be appropriate for a State to have participants other than the ten representatives specified in section 107(a)(1) of the Act involved in the decision-making process regarding provisions of the State plan.

Response. While representatives of other groups may participate in the planning process, only one designated representative from each of the ten groups specified in section 107(a)(1) of the Act must be involved in the approval of the provisions of the five-year State plan or the annual plan. No change is made in the regulation.

Comment. A commenter asked if it is possible for the State board to design the membership of the planning group in such a way that the State educational agency's personnel constitute a majority of the voting membership. This commenter also wanted to know whether the State board may appoint several persons for each category or if it is limited to only one representative for each.

Response. Although there is no requirement that each representative to the planning group have a vote, the responsibility for decisionmaking regarding approval of the provisions of the State plans is limited to one designated representative for each of the ten categories set forth in section 107(a)(1) of the Act. One person may represent more than one of the ten categories if the agency he or she represents has responsibility in more than one of the designated areas. No change is made in the regulation.

§ 104.162(f) Representatives of vocational teachers.

Comment. A commenter recommended that "including guidance specialist" be added after "vocational education teacher" in § 104.162(f). Another commenter recommended that the regulation preclude supportive staff being included in the vocational teacher category.

Response. While certain guidance personnel may be considered vocational education teachers, the regulation does not go beyond the Act in requiring the inclusion of such personnel. The Commissioner believes the State law will determine which supportive staff, if any, are eligible. No change is made in the regulation.

§ 104.164(b) State plan content relative to rejected recommendations.

Comment. Concerning the inclusion of rejected recommendations in the State plan, a commenter suggested that the regulation should require only a summary of the recommendations rejected and the reasons for rejection rather than the original correspondence and any primary data.

Response. Section 104.164(b) requires only a listing of the rejected recommendations, the individual, agency, or council making the recommendation and the reason for rejection. These items in fact constitute a summary and should not result in a voluminous data requirement. No change is made in the regulation.

§ 104.164(b)(1) State board adoption of State plan.

Comment. One commenter recommended that the language in this paragraph be changed to read, "Any recommendation which is rejected by the State board indicating its source," rather than "and its source."

Response. The recommendation is accepted. This change in language will clarify the requirement that the State board specify the particular agency making the recommendation.

§ 104.165 Public hearings.

Comment. Several commenters objected to the phrase "Prior to adoption" in § 104.165(a)(1) because it seems to compromise significantly the entire purpose of public hearings on the plan. In their view, the regulation permits a State to conceive, develop, and draft the plan without any significant input from the public. Their further contention is that the plan, once drafted, would not likely be changed. It is suggested that the phrase be changed to read: "Before the plan is written."

Response. The recommendation is accepted in part. The opportune time to hold public hearing is during the period of the plan's development. Accordingly, the regulation is changed to require the hearings "during the development, prior to adoption." If public hearings were held prior to the preparation of an initial draft, it would be difficult for the public to provide any meaningful direction since there would be no framework to initiate public discussion and reaction. Public input can be most important after there is a draft of the plan; however, the State may hold public hearings before there is a first draft or at any stage during the development of the plan when input may be useful.

§ 104.165(a)(3) Public hearings by region.

Comment. Commenters requested a definition of "all regions of the State." A few commenters suggested that several definitions be developed so that the State may choose from among them. Definitions suggested include (1) commonly recognized geographic divisions, (2) quadrants, and (3) areas feeding vocational-technical schools.

Response. Since most States have recognized regional divisions, it would be preferable to leave to the State how to define its regions and how best to serve the populace in the respective regions with regard to holding public hearings. No change is made in the regulations.

§ 104.165(c) Public views included in State plan.

Comment. A commenter suggested that, because of the volume of paperwork involved in including all views expressed at the public hearings in the State plan, only a summary of those views be included along with an explanation of how the State board plans to consider those views.

Response. Provisions of §§ 104.165(c) and 104.171(d) are intended to require inclusion of a summary of the views expressed at the public hearing and written comments submitted rather than letters, statements, and other primary data. Also to be included are the plans to implement those views accepted and the reasons for rejecting those views not included as part of the plan. No change is made in the regulations.

§ 104.165(c)(3) Public hearings.

Comment. A commenter recommended that the phrase "accepted for inclusion" be substituted for the term "included" in line 2 of § 104.165(c)(3).

Response. The recommendation is accepted. The revision will provide greater clarity to the State board's responsibility of setting forth the reason for rejecting any view submitted. The regulation is changed to read: "The reasons for rejecting any view which is not accepted for inclusion in the five-year State plan."

§ 104.171 *Certification of plans.*

Comment. A commenter recommended that this regulation include a paragraph which states: "The approval of an application under this part does not relieve an applicant agency of the responsibility to carry out its project or projects in accordance with the general application, the statute, and applicable regulations." The commenter felt this paragraph was necessary because the State board might consider compliance with certification requirements tantamount to approval by the Commissioner and write its plans accordingly.

Response. Section 104.171 requires a number of certifications regarding the State plan but does not serve as a guide for preparing the plan. Specific requirements for the content of the five-year State plan are set forth in §§ 104.181 through 188, and these detailed requirements must be adequately described before the Commissioner will approve a plan. No change is made in the regulation.

§ 104.171 *Number of certifications required.*

Comment. A few commenters suggested that many more certifications are required by the regulation than are mandated by the Act. A further comment was that the signature of each representative on the planning group required in § 104.171(b)(2) goes beyond the law and could be embarrassing to some of the signers.

Response. The inclusion of additional certifications in § 104.171 is intended to clarify statutory requirements necessary for compliance. By signing the certification required in § 104.171(b)(2), each representative on the planning group merely certifies that he or she had the opportunity to take an active part in formulating the plan. No change is made in the regulation.

§ 104.181 *Guidelines.*

Comment. Several commenters requested that the Office of Education reconsider the issue of promulgating separate guidelines for State plans. The view was expressed that, in fact, the proposed regulations are not precise, particularly with regard to State plans and State administration. They fear that plans will be weak and will not comply with the law. Concern related especially to the need to have State plan sections dealing with elimination of sex bias and sex stereotyping evaluated by persons with special knowledge of those issues.

Response. Public response to the Notice of Intent was divided on the issue of the need for additional guidelines. The Commissioner concluded that it was preferable not to issue separate guidelines, but rather to issue regulations which specify precisely what is required by the Act. With respect to the statutory requirements, the States will have considerable flexibility in determining how to meet the requirements of the Act and the regulations in the development of the State plan. Regarding the review of the plan, particularly in the area of sex bias and sex stereotyping, that review is one of the functions of the full-time personnel to eliminate sex bias listed under § 104.75, and § 104.171 (g) requires that this personnel certify that

they have had an opportunity to review the plan. No change is made in the regulation.

§ 104.182 *Procedures to assure compliance.*

Comment. A commenter felt that the regulations have an inordinate number of very specific requirements which would, in effect, reduce the State's options. As an example, the commenter cited § 104.182 and suggested that this regulation be deleted.

Response. The language of the regulations follows closely the language of the Act. The procedures to assure compliance contained in § 104.182 are deemed necessary by the Commissioner as a minimum to comply with section 109(a)(1) of the Act. No change is made in the regulations.

§ 104.182 *Additional procedures.*

Comment. A commenter suggested that the State Commission on the Status of Women in each State be designated as the agency to review the compliance procedures and to make a public statement as to the degree of progress relative to the elimination of sex role stereotyping.

Response. Although the State Commission on the Status of Women is encouraged to study the progress being made within a State to eliminate sex bias, there is no legal basis for requiring that Commission to monitor compliance procedures in the State. The personnel working to eliminate sex bias, under § 104.72, must review State plans and State programs, particularly for elimination of sex bias and sex stereotyping. The Commission may work with this personnel in accomplishing the functions under § 104.75. Also, the Commission may provide input annually to the State board through the public hearing process. No change is made in the regulation.

§ 104.182(f) *Consistency with Handicapped Act*

Comment. Two commenters recommended that the reference in this section to "child" be changed to "student" so that it includes not only children but adults as well.

Response. Section 106(a)(10) requires that the use of funds for the handicapped under section 110(a) of the Act be consistent with section 613 of the Education of the Handicapped Act. Section 613 requires an individualized educational program for handicapped children in certain age ranges and does not apply to any person over 21 years of age. Accordingly, to be completely consistent with the Handicapped Act, and to make clear that the applicability is to children, not adults, it is appropriate to refer to "child" rather than "student." No change is made in the regulation.

§ 104.182(f) *Additional citations.*

Comment. A commenter suggested that the applicability of Section 504 of the Rehabilitation Act of 1973 be specified. Another commenter suggested that "and the Education for All Handicapped Children Act of 1975" be added to the last sentence of § 104.182(f).

Response. The correct citation is the Education of the Handicapped Act, which was amended by the Education for All Handicapped Children Act of 1975. With respect to the applicability of Section 504 of the Rehabilitation Act of 1973, the Department promulgated final regulations on May 4, 1977, at 42 F.R. 22676. This regulation, which applies to all recipients of Federal assistance from HEW, including State Departments of Education and local educational agencies receiving vocational education funds, is intended to ensure that their federally assisted

programs and activities are operated without discrimination on the basis of handicap.

§ 104.183 *Assessment of employment opportunities.*

Comment. A commenter requested that the assessment of current and future needs for workers specify workers "of all ages."

Response. While there is some rationale for specifying the need for workers by age, it does not seem appropriate to go beyond the Act in mandating these data. Further, it is doubtful whether the data are readily available. No change is made in the regulation.

§ 104.184 *Limitation to four specified elements.*

Comment. A commenter suggested that § 104.184 limits unduly the flexibility of the plan and recommended that the words "at least" be added after "of" in the first paragraph. The regulation would then read: "This description shall be in terms of at least the following four elements * * *."

Response. The State may include in the plan any information it desires beyond that specified in the regulation as long as mandated requirements are met. Therefore, the State may describe its goals in terms of additional elements beyond the four elements specified. No change is made in the regulation.

§ 104.184(c) *Allocation of funds by institution.*

Comment. A commenter recommended that the regulation be changed to read "various types of institutions" instead of "various institutions." Other commenters felt that reporting program allocations by school district would result in too much detail.

Response. The first recommendation is accepted. The added language will clarify the intent of the regulation. In response to the second comment, only the annual program plan includes the proposed distribution of funds listed by eligible recipient and is mandated by section 108(b) of the Act. The five-year State plan includes allocation of funds by various types of institutions.

§ 104.184 (c) and (d) *Inclusion of CETA as an institution.*

Comment. A commenter suggested including CETA in "among the various institutions of the State."

Response. The provision for coordination with CETA is set forth in § 104.188. Furthermore, CETA is not an institution, and the Act provides no authority for including it with the "various institutions of the State." No change is made in the regulations.

§ 104.185(a) *Meaning of "as precisely as possible."*

Comment. A commenter asked what the phrase "as precisely as possible" means and asked if each State is to make its own interpretation. Another commenter suggested the deletion of the words "as possible" from the phrase in order to clarify the meaning.

Response. The recommendation to delete "as possible" from the phrase is accepted. Section 104.185(a) and 104.186 (a) and (c) will read: "set forth precisely." In light of this modification, the term does not appear to need further interpretation.

§ 104.186(c) *Special needs of older people.*

Comment. A commenter suggested that § 104.186(c) specify that the State plan must set forth funding to meet the special needs of older people, including persons over 65 years of age.

Response. The definitions of the handicapped and the disadvantaged do not identify specifically "older persons." The definitions include persons of all ages having special needs which cannot be met in the regular vocational education program without special assistance. While there is nothing to preclude the use of these funds for older persons, provided they meet the specific requirements, there is no statutory basis for including them as a separate category. No change is made in the regulation.

§ 104.186(d) Matching set-aside funds.

Comment. A commenter recommended that paragraph (d) of § 104.186 be deleted, since neither Section 107 nor Section 110 of the Act requires State and local matching funds for this purpose to be included in the five-year State plan. It was suggested that documentation regarding the matching requirements be included in the accountability report.

Response. While the matching of funds for the national priority programs is not specifically required in Section 107 of the Act, nor in the accountability report, it is essential to include this information in order to provide a complete plan of uses of all Federal, State, and local funds. It should be noted that the annual program plan and accountability report constitute an updating and tracking of the five-year State plan. No change is made in the regulation.

§ 104.187 Eradicating sex discrimination.

Comment. Several commenters observed that the mandate to simplify regulations has been carried to the extreme and recommended that this regulation spell out in detail how vocational opportunities, particularly for women, will be expanded. One of the commenters stated that the State plan should include (1) an assessment of the current status of vocational education with respect to equality of access to and equality of use of vocational education programs by both sexes, and (2) goals and timetables for achieving the changes the State intends to make. Another commenter recommended that States establish an incentive system in which priority is given to LEA applications that indicate both strategies and the commitment to overcome sex bias and sex stereotyping. Commenters also charged that public comments on the Notice of Intent issue of incentives were ignored and believe that incentives are necessary. Another commenter suggested that the reference to "both men and women" is not compatible with § 104.75 (d).

Response. The regulation outlines the requirements of the Act but purposely allows the State ample flexibility in meeting these requirements. It is anticipated that the content of the five-year State plan will be improved, particularly in the area of elimination of sex bias and sex discrimination, by updating through the annual program plan as a result of the activities of the personnel under § 104.75. Regarding incentives, the State is required by the Act to provide incentives for eligible recipients but has flexibility in developing a system of priorities for these incentives. The reference to "both men and women" is taken directly from the Act. No change is made in the regulation.

§ 104.187 Eradicating sex discrimination.

Comment. A commenter suggested that the term "eradicate" is a strong mandate for something which vocational education may have little control over and should be changed to a less strongly worded intent.

Response. The term "eradicate" as used in relation to sex discrimination is from the legislative history and appears to be synonymous with the term "overcome" used in the Act. No change is made in the regulation.

§ 104.187(a) Quota for equal access.

Comment. A commenter recommended that the words "but not necessarily quotas" be added in the sentence following "to ensure equal access."

Response. It is not appropriate for the regulations to require quotas for enrollments in vocational education programs. The States are required to set forth in detail their policies and procedures "to ensure equal access." Although some States may apply a system of quotas as part of these procedures, it is not mandated by the Act or regulations. No change is made in the regulation.

§ 104.187(a) Time for planning.

Comment. A commenter objected to including the requirements of § 104.187(a) in the five-year State plan due on July 1, 1977, since funds are not yet available for the persons who will do the work.

Response. The Commissioner is not authorized to waive this requirement for the initial year of the legislation. Although it is probable that, when in place, the full-time personnel to eliminate sex bias will work on this section of the plan, there is no requirement in the Act regarding who will develop this section of the plan. States have been encouraged to develop the best possible State plan in the limited time available and according to the requirements of the Act. The five-year State plan may be improved through the annual program plan updating or by amendment during the year. No change is made in the regulation.

§ 104.187(a) (2) (ii) Sex stereotyping.

Comment. A commenter suggested that § 104.187(a) (2) (ii) be changed to read: "Develop model programs to reduce sex stereotyping in training for all occupations," rather than "to reduce sex stereotyping in all occupations."

Response. The recommendation is accepted. While vocational education programs may not directly influence the reduction of sex stereotyping in all occupations, developing model programs which prepare persons of both sexes for occupations may have a positive impact on reducing sex stereotyping in occupations. Accordingly, inserting "in training for and placement in all occupations" will assure that the program proposed by the eligible recipient will focus on the reduction of sex stereotyping.

§ 104.188 Coordination with CETA.

Comment. Several commenters expressed concern about the implementation of coordination between vocational education and CETA. One commenter suggested that additional agreements may be needed at the national level. Another commenter suggested that the required "description of the mechanism established for coordination" may be reduced to mere observance of form. The recommendation was that more concrete links, such as mutual signature of plans, should be required.

Response. Section 104.188 requires the five-year State plan to describe the mechanism established for coordinating vocational education programs with manpower training programs. While only this description of the working relationship is required in the five-year State plan, the annual program plan in § 104.222(e) requires reporting of the results of the coordination annually in order to assure consistency from year to year. In addition, the statutorily created National Occupational Information Coordinating Committee will provide for coordination between vocational education and CETA at the national level. At the State level, a representative of the State Manpower Services Council is required to be a member of the planning group for the State plan, of the State Ad-

visory Council, and of the State occupational information coordinating committee. Since the regulation repeats the language of the Act, the States are free to include in the plan those concrete links, such as mutual signatures, which they consider desirable. No change is made in the regulation.

DEVELOPMENT OF ANNUAL PROGRAM PLAN AND ACCOUNTABILITY REPORT

§ 104.203 Due date of accountability report.

Comment. A commenter felt that too much time is allowed between the end of the fiscal year and the due date of the accountability report for that fiscal year. The commenter felt that current program information could be provided in less than the nine months the proposed regulation allows.

Response. Some of the data included in the accountability report will be reported earlier in the vocational education data system to the National Center for Education Statistics for use in preparing the annual report to Congress and other purposes. Thus, certain data will be available sooner than the July 1 deadline. Section 108(b) of the Act, however, requires submission of the accountability report with the annual program plan on the July 1 preceding the beginning of the fiscal year for which the plan will be effective. This accountability report will list the accomplishments achieved during the fiscal year preceding the submission of the plan and report. No change is made in the regulation.

§ 104.22 Annual program plan for 1978.

Comment. A commenter recommended that reference to §§ 104.183 and 104.184 be included in § 104.221. The commenter also felt that the requirement to include in the State plan the proposed distribution of funds among eligible recipients is an unreasonable burden and suggested that this requirement be deleted.

Response. The first recommendation is accepted. The reference to §§ 104.183 and 104.184 was inadvertently omitted from the NPRM. Section 104.221 is rewritten to include a reference in the second line to §§ 104.183 and 104.184.

In response to the second suggestion, the regulation follows the language of section 108(b) (1) (B) (ii) of the Act which requires the State plan to show the distribution of funds among eligible recipients. Therefore, this requirement cannot be deleted.

§ 104.222 Five-year State plan update.

Comment. Two commenters requested clarification regarding the yearly update of the five-year State plan. It was suggested that the five-year plan would stand as submitted with the annual program plan reflecting changes anticipated or projected which could affect the outcomes of the five-year plan.

Response. The five-year State plan will stand as it is submitted. The annual program plan will update any obsolete or inaccurate information in the five-year State plan relating to employment needs and goals for meeting these needs. The annual program plan will also include a more detailed description of how the funds projected in the five-year State plan will be used and any changes in funding proposed, along with the reasons for those changes. No change is made in the regulation.

§ 104.261 Review of plans by full-time personnel to eliminate sex bias.

Comment. A few commenters suggested that the full-time personnel to eliminate sex bias certify that they have made comments and recommendations on the State plan in addition to certifying that they have been afforded an opportunity to review the plan.

One commenter felt that it should be stated that the certification did not necessarily constitute an endorsement of the plan. Another commenter stated that the full-time personnel will not be employed until October 1, 1977, and therefore, cannot review the 1978 plan.

Response. In accordance with section 109 (a) (3) (B), the certification in § 104.261 (d) provides evidence to the Commissioner that the opportunity to review the plan was afforded the full-time personnel. This certification does not preclude inclusion of any comments the full-time personnel wish to make. Indeed, one of the functions of personnel under § 104.75 is to make information readily available to the State board and the Commissioner. Comments on the State plan may be submitted with the certification or at any other convenient time. By certifying that an opportunity to review the plan was afforded, the full-time personnel are not necessarily endorsing the content of the plan. It is recognized that all States may not have the full-time personnel employed until October 1, 1977; nevertheless, it is the responsibility of the State to assure that the plan is in compliance with the Act. No change is made in the regulation.

§§ 104.261 and 104.262 *Criteria for approval of plans.*

Comment. A commenter asked if criteria will be developed to assist the Commissioner in determining that the State has set forth adequate procedures to carry out the general application assurances and the provisions of the plan.

Response. The requirements of §§ 104.182 through 104.188 and §§ 104.221 through 104.241 are detailed enough to provide adequate criteria on the basis of which the Commissioner can determine whether the State is in compliance with the Act. No change is made in the regulation.

§ 104.262 (f) *Content of accountability report.*

Comment. A commenter recommended that the accountability report include course enrollment by race and by sex. It was contended that the report would be inadequate if it reports race and sex data without cross-tabulating them.

Response. To reduce duplication of reporting, the accountability report is not required to include program enrollment data by race or sex. These types of data will be supplied in the vocational education data system developed under section 161 of the Act. The data, therefore, are available to the State and may be included in the accountability report if desired. No change is made in the regulation.

§ 104.271 *Disapproval of plan.*

Comment. A commenter requested clarification of § 104.271 (b) providing that the Commissioner will not disapprove a State plan solely on the basis of the distribution of State and local expenditures. The commenter asked which sections of the Act are covered by this provision.

Response. Since there is no legislative history to indicate otherwise, it is assumed that § 104.271 (b) applies to all State and local expenditures for vocational education. Therefore, no change is made in the regulation.

HEARINGS BEFORE THE COMMISSIONER ON AGENCY OR COUNCIL CHALLENGES TO THE FIVE-YEAR STATE PLAN OR ANNUAL PROGRAM PLAN

§ 104.281 *Cost of appeal to the Commissioner.*

Comment. A commenter suggested that the cost of an appeal to the Commissioner should

be borne by the agency bringing the appeal, particularly the cost of travel of the agency's representative.

Response. The cost principles governing the vocational education State-administered program are contained in Appendix B to 45 CFR Parts 100-100d. In general, these principles provide that a cost of the grant program may be reimbursed with Federal funds if the cost is necessary and reasonable for the proper and efficient administration of the program, unless specifically provided otherwise by Federal law and regulation or State or local law.

With respect to the legal expenses incurred during a section 107 appeal between two State agencies to the Commissioner, item 16 in Appendix B (45 CFR Parts 100-100d) is controlling. In accordance with this provision, if the legal services for the appeal are furnished by the State's Attorney General or staff, the costs would be allowable because these attorneys would be discharging their general responsibilities. If one of the State agencies, however, retains private counsel because of a conflict of interest situation arising due to the State Attorney General representing two State agencies in an adversarial capacity, the legal expenses are allowable as a bona fide State administrative expense.

The travel costs of the agency representative involved in the appeal proceeding are also allowable in accordance with the principles contained in item 28 of Appendix B (45 CFR Parts 100-100d).

Since these principles are contained in the General Education Provisions Regulations, which are directly applicable to the Vocational Education Act, no change is made in the regulation.

§ 104.283 (a) *Hearing officer.*

Comment. A commenter suggested there should be more than one hearing officer on a panel to hear an appeal to the Commissioner from agencies and council on State plans, as two or more hearing officers could share the responsibilities.

Response. Appeals on State plans should be heard promptly so that the plan may become effective as soon as possible. Although experience has indicated that it is difficult to obtain the services of hearing officers at short notice because of their prior commitments, it should be possible to obtain one experienced hearing officer in the prescribed time. However, if more than one hearing officer were to be used, three would be needed in order to avoid the possibility of a one-to-one tie vote. No change is made in the regulation.

§ 104.286 *Criteria for Commissioner's decision on appeal.*

Comment. A commenter suggested that the proposed regulations "completely miss the point" in not setting out objective criteria so that interested parties will know in advance by what standards an appeal to the Commissioner will be judged, and so that the criteria can be uniformly applied to all States engaged in appeals to the Commissioner.

Response. The Act (section 107 as to the five-year State plan, section 108 as to the annual program plan) does not require, or authorize, the Commissioner to set criteria for the Commissioner's decision. The Act says that the Commissioner shall afford an opportunity for a hearing and "shall determine whether the State board's decision is supported by substantial evidence, as shown in the State plan, and will best carry out the purposes of the Act." Substantial evidence is a legal term which is used in relation to the standard for judging evidence in administrative hearings and on appeals to the

courts. The regulation (§ 104.286 (c)) uses the legal term and gives it the meaning given by the Supreme Court in the case of *Consolidated Edison Co. vs. National Labor Relations Board* at "305 U.S. 197, 229 (1938)." This definition of "substantial evidence" has been cited and followed in numerous administrative hearings and court cases since it was defined by the Supreme Court in the 1938 opinion. The legislative history in relation to the hearing (House Report No. 94-1085; Senate Report No. 94-882, p. 76; Conference Report No. 94-1701, p. 221) makes no reference to separate criteria.

Since it cannot be anticipated what part of the State plan may be the subject of the appeal, it would be very difficult, if not impossible, to set criteria, as recommended by the commenter, in relation to every possible appeal for the source of the evidence, the purposes of the Act, or for determining what the Commissioner believes will best carry out the purposes of the Act. No change is made in the regulation.

§ 104.287 *Determinations on appeal.*

Comment. The same commenter objected to the requirements in § 104.287 (a) (1)-(4) as being "a farce."

Response. These requirements are based on language in section 107 (a) (1) of the Act and repeated in § 104.287 (a) (1). The Act and the regulation first require the hearing officer to determine whether the procedures of that section (section 107 (a) (1)) have been followed. Then § 104.287 (a) (2) requires a finding that the State board's plan is legal. Paragraph (a) (3) repeats the "substantial evidence" rule of section 107 (a) (1), and paragraph (a) (4) repeats the standard that the hearing examiner determine that the State board's decision (rather than the appealing agency's recommendations) "best carry out the purposes of the Act."

As to purposes, section 101 of the Act entitled "Declaration of Purpose" states the purpose of the Act, and the legislative history should also be reviewed to determine the purposes of the Act. It is the opinion of the Commissioner that any attempt to restate the purposes of the Act as criteria for any appeal to the Commissioner would in effect be limiting and would be substituting the Commissioner's view of the purposes for that expressed by the Congress. No change is made in the regulation.

§ 104.288 (c) *Commissioner's decision on appeal of the State plan.*

Comment. A commenter suggested that if the Commissioner disapproves a State plan, the disapproval must be "based on a review of the entire plan."

Response. The Commissioner (through the hearing officer) will review the recommendations about the State plan made by the appealing agency or council and the State board's reasons for rejecting the recommendations. Depending on the nature of the recommendations, this may not require a review of the entire State plan. The language in § 104.288 (c) is based on language on page 216 of the Conference Report which says that, if the Commissioner does not approve the part of the plan in contention, the Commissioner does not rewrite the plan, but disapproves of it "in its entirety" and returns it to the State board for revision. No change is made in the regulation.

§ 104.289 *Appeal of the Commissioner's action to the Court of Appeals.*

Comment. With respect to the section 107 (a) appeal, a commenter pointed out that § 104.289 of the regulation states that a "State board, agency, or council" may appeal the final action of the Commissioner to the Court of Appeals, whereas section 107 (a) of the Act states only that any "agency or State

board" may appeal to the Court of Appeals.

Response. The regulation is amended to use the exact language of the Act. The right to appeal to the courts must depend on the language of the Act, not upon different language in the regulation. The House Report (H. Rept. No. 94-1085, p. 36) states: "After the Commissioner makes this determination, any dissatisfied agency or State board (but not the State advisory council on vocational education or the State Manpower Services Council) may appeal the Commissioner's decision to the Federal circuit court of appeals."

FISCAL REQUIREMENTS

§ 104.301 Zero-based budgeting.

Comment. A commenter, after pointing out that zero-based budgeting forces programs to analyze periodically their goals and objectives, to evaluate results regularly, and to spotlight duplication of effort, recommended that the regulation require zero-based budgeting by both Federal and State programs.

Response. In keeping with the general practice that the regulations do not regulate internal Federal matters, a statement that the Office of Education shall use zero-based budgeting is not set forth in the regulation. As to the States, a requirement in the regulation that the States adopt zero-based funding would interfere unduly in the States' own administrative matters. Therefore, no change is made in the regulation.

FEDERAL SHARE

§ 104.301(d) Matching in-kind.

Comment. A commenter asked whether the prohibition against using in-kind contributions to meet the matching and maintenance of effort requirements applies to both State and local levels.

Response. Section 104.301(d) provides that only actual expenditures of State and local funds shall be accepted as part of the State's matching and maintenance of effort requirements. This means that the prohibition against the use of in-kind contributions applies to both State and local levels. No change is made in the regulation.

§ 104.302 Distribution of funds for men and women.

Comment. A commenter suggested that the distribution of Federal funds should be controlled so that the availability of funds to men and women is equal.

Response. The Commissioner is prohibited by section 421A(c)(2)(B) of the General Education Provisions Act from imposing a funding distribution method different from that specified in the law authorizing the appropriation. Since the Act contains no authority for distributing funds equally among men and women, the Commissioner is not authorized to require it by regulation. No change is made in the regulation.

§ 104.302(a) Matching requirements.

Comment. A commenter stated that the 50 percent matching provision in § 104.302(a) is in error because some program sections allow 90 percent.

Response. Section 104.302(a) contains the general statutory matching requirement in section 111(a) that the Commissioner will pay to each State an amount not to exceed 50 percent of the cost of carrying out its annual program plan. The exceptions to this general requirement are enumerated in other regulatory sections. Since the fiscal regulations are interdependent and must be read together, it is unnecessary to list all the exceptions to the general 50 percent requirement in one section of the regulation. No change is made in the regulation.

§ 104.303 Matching for national priority programs.

Comment. Many commenters recommended that the 50 percent matching requirements for programs for the handicapped and disadvantaged as set forth in § 104.303 be reconsidered. These commenters have stated that it is inequitable for the State and local school districts to pay 50 percent of the cost of these programs when they are already supporting vocational educational education at such a high percentage. To expect State and local programs to adhere to these matching requirements when the proportion of Federal funding is so small is unrealistic.

Response. Section 110 of the Act provides that Federal funds shall be used to pay up to 50 percent of the excess of programs, services and activities for handicapped and disadvantaged persons. Section 104.303 of the regulation is based directly on this statutory provision. Section 421A(c)(2)(B) of the General Education Provisions Act (the Cranston Amendment) prohibits any funds to be apportioned, allocated, or otherwise distributed in any manner or by any method different from that specified in the law. Accordingly, no change is made in the regulation.

§ 104.303(c) and § 104.314 Postsecondary and adult programs.

Comment. Several commenters have pointed out that the word "and" is omitted between paragraphs (1) and (2) of § 104.303(c) and between paragraphs (a) and (b) of § 104.314 and recommend that it be added.

Response. This recommendation is accepted. The final regulation has added the word "and" between paragraphs (1) and (2) of subsection § 104.303 and between paragraphs (a) and (b) of § 104.314. Accordingly, in § 104.303(c) the Commissioner will pay an amount not to exceed 50 percent of the cost of both postsecondary and adult programs. In § 104.314, the State shall expend 15 percent of the section 102(a) allotment for both postsecondary and adult programs.

§ 104.303 Mainstreaming requirements.

Comment. A commenter suggested a new paragraph (d) be added to § 104.303 to read "Each State shall use, to the maximum extent possible, the funds required to be used for the purposes specified in subsections (a) and (b) to assist individuals described in those subsections to participate in regular vocational education programs."

Response. The mainstreaming requirement for handicapped persons is contained in § 104.312. The mainstreaming requirement for disadvantaged persons and persons of limited English-speaking ability is set forth in § 104.313(b). Since the inclusion of these provisions into § 104.303 would result in a duplication, no change is made in the regulation.

§ 104.305(a)(3) Administrative costs.

Comment. A commenter requested the deletion of the phrase "excluding State administration and ancillary services" in subparagraph (3) of § 104.305(a). The commenter pointed out that the Act has no such limitation.

Response. The comment has been accepted. Section 140(b)(1) of the Act provides that the State shall use Federal funds allocated for the Special Programs for the Disadvantaged to pay the full cost of vocational education for disadvantaged persons. Since State administration and ancillary services may be characterized as part of the full cost of the programs, expenditures for the administration of the program and ancillary services

directly related to the program may be attributed to the section 102(b) allotment.

MINIMUM PERCENTAGES

§ 104.312 Minimum percentage for the handicapped.

Comment. A commenter suggested that because Part B of the Education of the Handicapped Act, as amended by the Education for All Handicapped Children Act of 1975, Pub. L. 94-142, mandates that each individual handicapped person be served in the "least restrictive environment," the regulation should require the States to use section 110(a) funds to the maximum extent possible to assist handicapped persons to participate in vocational education programs provided in the "least restrictive environment."

Response. Section 612(5) of Pub. L. 94-142 requires the State to establish procedures to assure that special classes or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Since funds used for the purposes of section 110(a) of the Vocational Education Act must be consistent with the State plan submitted pursuant to section 613(a) of the Education for All Handicapped Children Act, the statutory requirement on least restrictive environments is binding on section 110(a) of the Vocational Education Act. Furthermore, § 104.182(f) of this regulation requires the vocational education programs for handicapped children to be planned and coordinated in conformity with and as a part of the child's individualized education program as required by the handicapped legislation. Therefore, no change is made in the regulation.

§ 104.313 Minimum percentage for the disadvantaged.

Comment. Many commenters expressed concern over the inconsistency in § 104.313(a) and the overview of the regulations in the Notice of Proposed Rulemaking. Section 104.313(a) provides that the State shall expend "at least" 20 percent of the section 102(a) allotment for the disadvantaged. The overview of the regulations at 42 FR 18542 states "up to 20 percent."

Response. The statement contained in the overview concerning the minimum percentage for the disadvantaged is incorrect. The text should read "at least 20 percent to pay up to 50 percent of the costs of programs for the disadvantaged * * *". Since the language in § 104.313(a) is correct, no change is made in the regulation.

§ 104.313 Minimum percentage for the disadvantaged.

Comment. A commenter expressed a view that the proposed rules, which allow the local educational agencies to charge the cost of vocational education programs for the disadvantaged, would result in supplanting of funds. According to this commenter, a strong possibility exists whereby the schools in economically disadvantaged areas will take students who succeed in regular programs, identify them as disadvantaged, and charge the set-aside for complete teacher salaries. In order to avoid supplanting, the commenter suggested that an individualized plan for each disadvantaged student be developed which would indicate that supplemental assistance is essential to enable that student to succeed in the regular program.

Response. The term "disadvantaged" is defined in Appendix A. In accord with this definition, a disadvantaged person must re-

quire special services and assistance in order to succeed in vocational education programs. Students who can succeed in the regular vocational education program are not eligible for funding under the minimum percentage for the disadvantaged.

Furthermore, the dollar for dollar matching provision required by section 110(b) of the Act for programs for the disadvantaged would seem to preclude any possibility of supplanting of funds. The statutory "no-supplant" provision in § 106(a)(6) is designed to assure that the aggregate of State and local funds available for a specific purpose, such as the disadvantaged set-aside, is not reduced because of the receipt of Federal funds under the Act. Therefore, as long as the combined State and local funds match the Federal funds earmarked for the purposes of section 110(b), it is unlikely that a violation of the "no-supplant" requirement would occur.

The suggestion for requiring an individualized plan for the disadvantaged, as required for the handicapped, may be found desirable by some States but it is not mandated by the Act. Since this procedure is not required by the Act, it is not appropriate to be included in the regulation. Thus, no change is made in the regulation.

§ 104.313(b) Minimum percentage for the disadvantaged.

Comment. A commenter stated that because of the history of minorities and the disadvantaged in vocational education, it is critical for the regulation governing the national priority program for the disadvantaged to offer disadvantaged students a genuine opportunity and not the traditional "dumping ground." In order to accomplish this objective, the commenter suggested incorporating into the regulation reporting requirements on criteria for selecting students, the kinds of programs available, needs assessments, evaluation tools, and enrollment data.

Response. The suggestions offered by this commenter are already an integral part of the regulation. The criteria are set forth in Appendix A; the regulations contained in §§ 104.183 through 104.188 govern the various requirements pertaining to kinds of programs, needs assessments, and enrollment data; and §§ 104.401 through 104.405 set forth the program evaluation requirements. Since the commenter's recommendation is incorporated into the regulation, no change is made.

MAINTENANCE OF EFFORT

§ 104.323 Reductions in expenditures.

Comment. A commenter questioned the basis in §§ 104.323 and 104.324 for permitting reductions in expenditures for vocational education. The commenter contends that any reduction would be a violation of section 111(b) of the Act.

Response. The term "fiscal effort" as used in section 111(b) is not defined in the Act or in the legislative history. For the purpose of this regulation, therefore, the term relates to tax effort and takes into account the relationship between tax rate and tax base. If the tax base declines but the tax rate remains constant, fiscal effort is considered to be maintained even though the tax yield declines proportionately. If, on the other hand, section 111(b) was written in terms of absolute spending levels, rather than fiscal effort, then the regulation would not permit any flexibility or deviation from the base year.

Since in the Act the funding requirement is stated in terms of maintenance of fiscal effort, a tolerance of five percent or less, as set forth in § 104.323, can be justified on the grounds that the State's effort can be

said to be sustained although there was a minor decrease in actual spending levels. An allowance of any more than five percent would risk transgressing statutory intent.

Similarly the unusual circumstance rule in § 104.324 is justified because an event which is out of the control of the State does not reflect a diminished fiscal effort. An event warranting such an exception must be unusual in the sense that the grantee clearly could not have anticipated it or compensated for it.

Accordingly, no change is made in the regulation.

STATE EVALUATION

§ 104.402 Evaluation requirements.

Comment. Several commenters were concerned by what they perceived as the excessive burden of performing all of the kinds of evaluation listed in § 104.402 (a), (b), and (c). Some recommended that subsections (a) and (b) be deleted for that reason. Other commenters wanted additional criteria such as "job mobility" and "student satisfaction." Several urged that the States be allowed to choose whether or not to use the suggested criteria. Most of these commenters wanted the State board to be free to determine and use the criteria for program and project evaluation which it considers to be most appropriate.

Response. It should be noted that while the Act requires evaluation during the five-year period of the effectiveness of each program or project, the numbered examples in paragraphs (a), (b), and (c) are only suggestive and the lists are not exhaustive. Therefore, with respect to § 104.402, the States already have the freedom of action described and desired by these commenters. The extent of the burden of evaluation will be determined largely by the State board. No change is made in the regulation.

§ 104.402 Use of sampling for evaluation.

Comment. Several commenters urged that the States be allowed to use sampling techniques in evaluating the effectiveness of their programs and projects of vocational education.

Response. The regulation does not preclude use of reasonable sampling procedures for the purposes of § 104.402. Therefore, the regulation has not been modified.

§ 104.402 Evaluation of State and local programs.

Comment. A commenter objected to the required inclusion of State- and locally-supported programs and projects in the evaluation, on the grounds that the Act does not contain this requirement.

Response. Paragraph (c) of § 104.301 states that "every program or activity supported in whole or in part by State or local funds which are used to match Federal funds must meet the same conditions and requirements as those supported by Federal funds." Therefore, State and locally supported programs and projects cannot be exempted from the requirement. Thus, no change is made in the regulation.

§ 104.402 Employer satisfaction.

Comment. One commenter urged that the regulation permit and encourage the States to secure data on employer satisfaction and student performance by any means considered appropriate by the State, including surveys conducted by local educational agencies.

Response. Except for the data on program completers and leavers required by § 104.404, the States may perform the evaluations required by § 104.402 by any appropriate procedures. Therefore, the regulation has not been amended in this regard.

§ 104.402 Financial and legislative limitations.

Comment. One commenter urged the inclusion of evaluative criteria related to the financial limitations and other limitations set by the State's legislature.

Response. Since the lists of numbered criteria in § 104.402 (a), (b), (c), and (d) are only suggestive and not exhaustive, the States are already free to use additional criteria in their evaluation of program and project effectiveness. No change is made in the regulation.

§ 104.402 Qualitative versus quantitative.

Comment. A commenter finds confusing the requirement that program effectiveness and other essentially qualitative factors should be evaluated in quantitative terms. The recommendation is that the regulation be amended to read "evaluate in quantitative and/or qualitative terms as appropriate."

Response. The intent of the regulation is that the report of the evaluations be expressed in objective terms that facilitate verification and make possible the aggregation of data within a State and across States, rather than in subjective, impressionistic terms. For example, instead of describing services to women students in qualitative terms of "excellent" and "cooperative" attitudes and efforts of the staff, the regulation means to encourage reporting the facts as the number of women who enrolled in and completed each course traditionally reserved for men, the comparative numbers of men and women in the courses, and the number of each sex who found (or were placed in) employment in the field of training. The same kind of objective reporting would apply to all programs and projects supported under the Act. The recommended change is therefore not accepted because it would seem to encourage less objective and less useful kinds of reporting. No change is made in the regulation.

§ 104.402 Services to special populations.

Comment. A commenter found § 104.402 (d) "particularly inept and confusing" and recommended that services to women, members of minority groups, handicapped persons, and disadvantaged persons be measured by the same criteria used for measuring services to other students.

Response. The criticism is well taken. The intent of the regulation was that service to the named "special populations" should be measured by the same criteria as are used with all other students, and that in addition the State's evaluation would report on any other services provided for those special groups. The proposed regulatory language is not clear, and § 104.402 (d) has been amended to read "The results of additional services as measured by the suggested criteria under paragraphs (a), (b), and (c) of this section, that the State provides under the Act to these special populations."

Comment. A commenter recommended that paragraph (d) of § 104.402 be amended to mandate evaluation of the effectiveness of services to the special populations named there instead of making that part of the evaluation optional.

Response. The recommendation is accepted because the law not only requires evaluation of the effectiveness of all programs, projects and activities assisted under the Act, but also gives particular emphasis to those special populations. As amended, paragraph (d) becomes mandatory. In keeping with this rationale, a fifth special population category "persons of limited English-speaking ability" is added to paragraph (d).

§ 104.402 Services to the handicapped.

Comment. A commenter recommended that for each handicapped student, the State be required to include in its evaluation information about the instructional environment of the student, identification of the handicapping condition, and the specific occupational program in which the student is enrolled.

Response. The act provides no basis for requiring these data, and there is provision in other legislation, e.g., the Education of the Handicapped Act, as amended by the Education for All Handicapped Children Act of 1975, for reporting on services to handicapped students. Therefore, no change is made in the regulation.

§ 104.402 Fluctuations of the economy.

Comment. A commenter wanted the State's evaluation of the extent of placement of vocational education students in jobs to take into account changing economic conditions which affect the job market.

Response. Although the intent of such an amendment is meritorious, the recommendation is not accepted, because it would increase without statutory justification the already heavy burden borne by the State boards. The State board is, of course, free to take changing economic conditions into consideration in making the evaluation if it chooses to do so. No change is made in the regulation.

§ 104.404 Follow-up of all students.

Comment. One commenter interpreted § 104.404 to mean that follow-up data should be secured for only those "completers" and "leavers" who find employment, and urged that the follow-up survey both those employed and those unemployed.

Response. No modification of the regulation is required, since § 104.404(b)(1) will show whether or not the completer or the leaver found employment and whether the employment was or was not related to the vocational training.

§ 104.404 Definition of program leaver.

Comment. Two commenters recommended deletion of § 104.404(c)(2)(ii), "all other leavers," on the grounds that the inclusion of that part of the definition would require follow-up of students, for example, who enroll in a single vocational education course and leave two weeks later. This would impose an unreasonable burden if such a leaver must be included in the follow-up survey.

Response. The Commissioner is aware of the problem posed by students whose enrollment is of such limited duration that they should not be counted in any survey of program leavers. However, instead of setting by regulation a maximum duration of enrollments that are not to be counted, the Commissioner prefers that such guidance be furnished as part of the instruction for submission of required reports and data. No change is made in the regulation.

Comment. A commenter recommended changing the definition of "program leaver" to say that the leaver has nevertheless "acquired sufficient entry-level job skills to work in the field for which he or she was trained."

Response. It is the view of the Commissioner that the recommended change would eliminate from consideration in the evaluation and reporting those persons who do not acquire entry-level job skills either because they have not learned satisfactorily or have not been taught satisfactorily. It is believed that failure to include these persons in the report would violate the intent of the Congress. Therefore, no change is made in the regulation.

Comment. A commenter suggested that the definition of "program leaver" should be made parallel to the definition of "program completer" by adding in § 104.404(c)(2) that program leaver means a student who has been enrolled in and has attended a program of vocational education "which purports to teach entry level job skills."

Response. This suggestion has been accepted. It was intended that the definitions of "program completer" and "program leaver" be parallel. It was also intended to include the phrase "which purports to teach entry level job skills" in both definitions. The regulation has been amended accordingly.

§ 104.404 Instructions by National Center for Education Statistics.

Comment. Two commenters asked whether the NCES instructions and standards referred to in § 104.404(d) are mandatory or whether the State may choose to use a different reporting system.

Response. Use of the NCES instructions and standards is mandatory. The Act (sec. 161(a)(3)(B)) emphasizes and mandates reporting on program "completers" and "leavers." Without a uniform data reporting system it would not be possible to aggregate and report the data across States (i.e., nationwide). No change is made in the regulation.

§ 104.404 Exclusion of homemaking job skills.

Comment. Two commenters wanted the reference in § 104.404(a) to "entry-level job skills" to be expanded thus: "which purports to teach entry-level job skills, not to include the occupation of homemaking," on the grounds that it is unreasonable to try to evaluate the adequacy of training for homemaking.

Response. "Entry-level job skills" is interpreted as referring solely to paid employment, which eliminates from consideration homemaking by either spouse or parent. Homemaking by a paid housekeeper, nursemaid, or other such paid employee would be treated in the same way as any other gainful employment. No change is made in the regulation.

§ 104.404 Scrutiny of teaching materials.

Comment. A commenter urged the Office of Education to improve the effectiveness of program evaluation by examining vocational education courses and teaching materials to determine their "pertinency" and "currency," especially for the future needs of the nation.

Response. It is the view of the Commissioner that the effect of the recommendation would be to involve the Federal government in matters which are the prerogative of the States and local schools. No basis was found in the Act to support the recommendation. Therefore, no change is made in the regulation.

SUBPART 2—BASIC GRANTS

§ 104.502(b) Distribution of basic grant funds.

Comment. Many commenters objected to the mandatory reservation of funds under the basic grants in § 104.502(b) for special programs and placement services tailored to meet the need of the special populations described in § 104.621. Some of these commenters were concerned that if funds are reserved for displaced homemakers and other special groups, the remaining funds may be insufficient for vocational education programs described in § 104.511. Other commenters suggested that funding for programs for these special populations be attributed to another section of the law.

Response. Section 107(b)(4)(B) of the Act requires that the State set forth in its five-

year plan a program to assess and meet the needs of persons described in section 120(b)(1)(2). This program will provide for special courses for these persons in learning how to seek employment and placement services for the graduates. Therefore, even though the Act attempted to consolidate numerous programs under section 120 to provide greater flexibility and discretion to the State, funding for programs for displaced homemakers as well as for full-time personnel to perform the functions in § 104.75 is mandatory. Funding for the balance of activities listed in section 120 is permissive. Neither the Act nor the regulation, however, requires a minimum funding level for programs for these special populations. The State must earmark an amount of funds it considers adequate to support the courses and services which are described in its five-year plan to meet the needs of these special populations. Accordingly, no change is made in the regulation.

§ 104.502(c) Support for guidance under the basic grant.

Comment. A commenter recommended that guidance and counseling be added to the list of purposes for which funds under section 120 of the Act may be used. The rationale for the comment is that guidance and counseling services are essential to the successful placement of individuals in careers.

Response. The Commissioner agrees that guidance and counseling are essential for the successful placement of individuals. However, the Act provides funding for this activity in subpart 3—Program Improvement and Support Services. Section 134 requires the State to expend at least 20 percent of the subpart 3 allotment for guidance and counseling services. Thus, no change is made in the regulation.

§ 104.502(c) Consolidation of programs.

Comment. A few commenters perceived the consolidation of the expansive list of programs, services, and activities in § 104.502(c) as a "danger point" because if States can determine their own priorities for funding, low priority may be given to support services for women. These commenters suggested that with respect to programs which may contribute to eliminating sex stereotyping, the regulation should mandate funding.

Response. One of the major purposes of this new Act is the consolidation of numerous programs and activities into a single basic grant. This consolidation allows the State to determine its own priorities for funding. Consequently, there is no legal justification to undo by regulation what Congress specifically directed by statute. Thus, no change is made in the regulation.

§ 104.511(b) Initial equipment.

Comment. Many commenters expressed some confusion with respect to the inclusion of "instructional equipment" and the exclusion of "initial equipment" in the definition of vocational education programs in § 104.511(b). Part of the confusion seems to stem from the fact that the definition of "school facilities" in section 195 includes "initial equipment." Some of these commenters requested that the regulation clearly distinguish these terms.

Response. The language contained in § 104.511(b) is based directly on the statutory definition of vocational education in section 195. This definition provides in part that the "term 'vocational education' does not mean the construction, acquisition or initial equipment of buildings." "Initial equipment" includes building fixtures, utilities and furnishings or simply the materials which must be placed in a facility to accommodate the type of instruction or other voca-

tional education purpose for which the facility is designed. Although the definition of "vocational education" does not allow for the purchase of initial equipment, States may use funds under the authority of section 120 (b) (1) (E) (construction of area vocational education school facilities) for initial equipment. It should also be noted that the definition of vocational education allows for the acquisition of instructional equipment. No change is made in the regulation.

§ 104.512(b) (3) Apprenticeship related instructional programs.

Comment. A commenter expressed the view that, since apprenticeship-related instructional programs are directly tied to the process of job placement, more than a simple reference to them in § 104.512 should be given. This commenter suggested that a more detailed regulation governing the operation of these programs be adopted.

Response. The comment is accepted. In view of the importance of related instruction to apprentices who are employed to learn trade skills, a new regulation, § 104.515, has been added. The language of this provision is adopted from the regulation promulgated in 1975 by the Commissioner at 40 FR 57760 (December 11, 1975) on this same subject matter. This regulation requires the State to include certain assurances in the five-year plan if apprenticeship-related instructional programs are offered.

These assurances will (1) insure that the vocational training is supplemental to on-the-job training experience of the apprentice; (2) set minimum age standards; (3) require an apprentice training agreement; (4) outline the required characteristics of the skilled trade; (5) specify the classifications of registered and non-registered apprentices; and (6) require conformity with Department of Labor regulations on apprenticeship programs.

§ 104.513 Student organizations.

Comment. A great many commenters submitted their views both in writing to the Regulations Task Force and at the public meetings on the subject of vocational education student organizations. Although the vast majority of these commenters expressed their satisfaction with the inclusion of a regulation authorizing the expenditure of funds for activities of vocational education youth organizations which are an integral part of the vocational education programs, many commenters objected to certain aspects of the regulation.

Many commenters objected to paragraph (c) which lists six activities which cannot be considered an integral part of vocational instruction. Some believe that it is entirely unnecessary to regulate on nonreimbursable activities because it is generally assumed that if an activity is not explicitly set forth, it cannot be funded.

A number of commenters expressed disapproval with some of the items listed as non-reimbursable in paragraph (c). Some commenters felt strongly that attendance at conventions, student organization newsletters, and recognition of outstanding performance are all vital elements of the student organization instructional and leadership program. Since these activities are designed to prepare youth to become responsible members of society, these items should be moved into reimbursable activities in paragraph (b). Many members of student organizations either testified at the public meetings or wrote letters explaining that the elements in paragraph (c) represented an important educational function and should be supported financially. One individual testified that students value their awards more than anything.

The one item in paragraph (c) which received the most comment was the prohibition against using funds for lodging, feeding, conveying, or furnishing transportation to conventions or other forms of assemblage. Some commenters pointed out that national and State conventions, culminating the experience of conferences held locally and regionally, provide an excellent educational forum for an exchange of ideas and are an integral part of the instruction. Limiting funds for this purpose will have a negative impact on the future of vocational education.

A few commenters objected to the use of the term "assemblage" in paragraph (c) (1). They felt this term would preclude the furnishing of transportation to any activity in which groups of students come together, including field or laboratory work incidental to the vocational training. Others argued that funds should be available for furnishing transportation to skill competitions which are directly related to the instructional program. Some commenters expressed the view that allowing funds to be used for transportation of students for student organization activities may lead to abuse in the use of funds.

A few commenters stated that the regulations may be fostering a discriminatory policy if the lodging and travel of statewide coordinators are reimbursable, but student costs are not. Others generally questioned whether funds may be used to pay the salaries of statewide coordinators.

One commenter suggested that if Federal funds are to be used to support the cost of instructional supplies and materials for student organizations, then a requirement should be imposed to insure that such materials are free of sex stereotyping. Another commenter recommended that States be required to match dollar for dollar Federal funds used for student organizations.

Many commenters recommended that the regulations be amended to insure explicitly that any activity of an organization funded with Federal dollars be available to all students in the instructional program without regard to membership in the student organization. In this connection, Congressman Perkins and Quile in the House Committee on Education and Labor stated in a letter to the Commissioner, "We do not believe that any activity can be supported with Federal funds unless all of the students in the instructional program are eligible to participate without regard to membership in any student organization. Otherwise, we feel that the Federal government would be in the untenable position of excluding students from the benefits of a Federally-funded program solely because they do not choose to join a private organization."

A few commenters strongly objected to the use of Federal funds to support any activity of a student organization. They stated that there is no authority in the law or legislative history to support the regulation. In their view, Congress considered and rejected proposals which would have expressly permitted support for such activities.

Still others who expressed strong support for student organizations urged that the Office of Education not control by regulation that which was not deemed necessary to impose by legislation. They argue that the intent of Congress was to leave student organizations out of the law because, "The student organizations are doing fine. It may be doing them a disservice to put them in the Federal law, thus making them part of the system, subject to its structure. Any legislative support is best left to the individual States."

Response. The Office of Education recognizes the educational programs and philoso-

phies embraced by vocational education student organizations as being an integral part of the vocational education system of training. The efforts of these student organizations to improve the quality and relevance of instruction, to develop student leadership and to enhance citizenship responsibilities have equipped and will continue to equip vocational education students with the tools necessary to enter the labor market and to assume successful roles in society. To this end, § 104.513 of the regulations allows that Federal, State, and local funds available under the five-year State plan (subject to the overall matching requirements) may be used to give support to the activities of vocational education student organizations which are directly related to the vocational education instructional programs under the approved five-year State plan. It should be made clear at the outset that, since the activities of student organizations are not explicitly authorized in the Act, the activities can only benefit from the vocational education program to the degree to which the activity is directly integrated into the regular instructional program.

It has been apparent to the Office of Education that this national policy on student organizations has been interpreted differently by the States. Some States have construed the policy in earlier regulations broadly to reimburse all student organization activities. Other States have adopted a very limited view of specific activities which are reimbursable. As a result of this demonstrated ambiguity, the Commissioner has decided to provide the States with uniform guidance on reimbursable activities of student organizations. This guidance was set forth in proposed form in § 104.513 of the Notice of Proposed Rulemaking.

The language of the final regulation closely resembles the proposed regulation with minor amendments to reflect some of the more compelling comments submitted. In the first place, paragraph (b) continues to list supportable activities, and paragraph (c) lists non-supportable activities. These paragraphs are not intended to be exhaustive lists, but merely a framework the State should use in distinguishing between reimbursable and non-reimbursable activities. Despite the comments to the contrary, the Commissioner believes it is essential to list non-reimbursable activities in order to avoid misinterpretation.

The specific items listed in paragraph (b) are extrapolated in large part from the statutory definition of vocational education. (All of the student organizations, of course, are subject to the Title IX provisions on sex discrimination and the section 107(b) (4) (A) requirement to eliminate sex stereotyping. Instructional materials used by the student organizations are subject to the same requirements, which are not repeated in the regulation.) Support is not limited, however, to training, field work, and acquisition of instructional supplies. Instruction oriented activities such as special demonstration projects, lectures and exhibits initiated by vocational education personnel may also be supported. Salaries of State-wide coordinators responsible for the aforementioned activities are also reimbursable as an administrative cost. Vocational counseling in connection with vocational training for the purpose of facilitating occupational choices may be supported with funds available under section 130, not section 120.

The text of paragraph (b) has been amended under subparagraph (2). The final clause "cost of travel thereto" has been deleted because, as some commenters indicated, the generally-accepted prohibition against use of Federal funds for transportation to conventions could too easily be cir-

cumvented by permitting use of Federal funds for any type of travel of students. This does not mean that funds cannot be used for travel which is part of the instructional program. Funds may be expended on an activity such as travel of class members when such travel is necessary to carry out an otherwise allowable activity such as field work.

Although paragraph (c) lists six items which cannot be funded due to their non-instructional nature, the language in (c) (1) received the most criticism. This subparagraph provides that "an integral part of vocational instruction" does not include lodging, feeding, conveying, or furnishing transportation to conventions or other forms of assemblage. This language, which is taken directly from 31 U.S.C. 551, controls the expenditure of Federal funds and all State and local funds set forth under the plan. The word "assemblage" in this subparagraph, however, was not intended to include field work and laboratory work, but rather social, athletic, or recreational events. Accordingly, the word "social" has been inserted before the word "assemblage."

Finally, paragraph (a) lists the general conditions for funding vocational education student organizations described in the approved five-year State plan. In addition to the activity being an integral part of the instruction and supervised by vocational education personnel, another condition is made explicit in light of the comments received. The activity must be available to all students in the instructional program without regard to membership in any student organization. Students cannot be excluded from the benefits of a program receiving Federal funds because they do not choose to join the student organization.

§ 104.514 Vocational instruction under contract.

Comment. Many commenters expressed confusion with respect to the scope of § 104.514. Some questioned whether private vocational training institutions include both private-for-profit and private nonprofit institutions. Others requested clarification on any special requirements pertaining to arrangements with private post-secondary vocational training institutions.

Response. Part of the confusion on the issue of private vocational training institutions was due to the omission of the contracting authority for private vocational training institutions in the Act. The Technical Amendments, however, restore this contracting authority. Accordingly, the regulation has been amended to reflect this revision to the Act. A new paragraph (c) has been added to § 104.514 permitting the State or LEA to make arrangements with private vocational training institutions provided that the institution (1) can make a significant contribution to attaining the objectives of the plan and can provide substantially equivalent training at a lesser cost, or (2) can provide equipment or services not available in public institutions.

In addition, paragraph (a) of § 104.514 has been amended to clarify the fact that contracts with private vocational training institutions include both for profit and nonprofit institutions.

§ 104.514 Discrimination in private education institutions.

Comment. A commenter suggested that no Federal funds should be shared with private educational institutions without an active effort to make certain that they do not discriminate.

Response. Title VI of the Civil Rights Act, which prohibits discrimination on the basis

of race, Title IX of the Education Amendments of 1972, which prohibits sex discrimination, and section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of the handicapped, are applicable to all institutions receiving Federal funds, whether public or private. The State educational agency has the responsibility for assuring that these civil rights provisions are being carried out. Since these non-discriminatory provisions are already binding on private educational institutions, no change is made in the regulation.

§ 104.521 Work study—discrimination.

Comment. Several commenters pointed out that some of the most overt discrimination against students takes place in the employment they obtain through their schools. School officials often acquiesce to requests from employers which discriminate on the basis of sex in placement, responsibility, salary, and advancement, and the practice has continued unabated since the implementation of Title IX. These commenters also believe that it would be contrary to the purpose of the Act to prohibit sex discrimination in vocational training but to permit it to occur in employment. They suggest that the regulation should require that no student be recommended for, placed in, or receive benefits under a job which discriminates on the basis of sex and race. Employers seeking to employ students under work study programs or cooperative vocational education programs should be required to sign assurances that they will not discriminate on the basis of sex or race in hiring, placing, or paying students.

Under all employment programs, school officials should be required to reject sex-specific employment requests and to make an affirmative effort to inform employers that the school is prohibited by law from maintaining cooperative arrangements with any employer which discriminates. Furthermore, these commenters contend that officials should bear some responsibility for monitoring employers' compliance. This could be accomplished by maintaining a simple data file indicating the company by which each student is employed; the race and sex of the student and the level in the vocational education program which she or he had completed when employed; a summary of the student's previous work experience, and a job description and the starting salary at which the student was employed. Where a school finds indications of discrimination in the employment of its students, it should be required to conduct a full investigation and withdraw the cooperation of its job referral offices if businesses are engaging in discriminatory hiring practices which they refuse to make an affirmative effort to correct.

Response. The Commissioner concurs with the concern expressed in this comment that overt discrimination against students frequently occurs in the employment the students obtain through their schools. Such discrimination practices are in direct violation of Title IX of the Education Amendments of 1972 which prohibits sex discrimination under any education program or activity receiving Federal financial assistance. This requirement, which is referenced in 45 CFR 100b.262 of GEPR, is binding on the work study program, apprenticeship program, and the cooperative education program where the issue of sex discrimination in student employment is most significant. Since the prohibition against sex discrimination is already in the GEPR, it is unnecessary to repeat the provision in the separate program regulations.

A change has been made, however, in § 104.75(e) of the regulation. Since the func-

tions of the full-time personnel include the review of all vocational education programs in the State for sex bias, an explicit reference is now made to the review of work study programs, apprenticeship programs, and cooperative vocational education programs and the placement of students who have successfully completed vocational education programs.

Although these regulations do not require LEAs to maintain the type of data file on each student participating in work study or cooperative programs as suggested by these commenters, the full-time personnel designated to eliminate sex discrimination may want to consider seriously the adoption of this recommendation.

§ 104.521 Work study—disadvantaged participation.

Comment. Many commenters questioned whether work study funds would be a legitimate expenditure under the minimum percentage for the disadvantaged in section 110 (b) of the Act.

Response. In light of the enactment of the Technical Amendments, States may compute work study funds expended for the disadvantaged as a legitimate expenditure for the minimum percentage for the disadvantaged. Section 110(b) now allows for the cost of programs, services and activities under subpart 2 to be applied against the 20 percent set-aside. Since work study is a permissible activity under subpart 2, the funding of work study for the disadvantaged is an allowable cost under section 110(b). A change has been made to § 104.303 to clarify this matter.

§ 104.522(b) Work study—ranking of applications.

Comment. A commenter questioned whether the State must fund work study programs for all LEAs or only for some of them.

Response. Under the consolidation imposed by the Act, the State retains the discretion of determining which programs under section 120 will be funded. If work study programs are funded, then the State must give funding preference to applications submitted by LEAs serving communities having substantial numbers of youths who have dropped out of school or who are unemployed in accordance with § 104.522(b). No change is made in the regulation.

§ 104.523(a) Work study administrative costs.

Comment. Many commenters suggested that the last sentence of § 104.523(a) requiring work study administrative costs to be supported with non-Federal funds be deleted. Some of these commenters suggested that the following sentence be substituted: "Funds shall be expended solely for payment or compensation to students employed in work study programs."

Response. In view of the fact that the Technical Amendments now authorize the use of Federal funds for local administrative costs, the provision in § 104.523(a) prohibiting such use has been deleted. Nevertheless, section 121(b) (1) of the Act requires that Federal funds for work study be expended solely for the payment of students employed pursuant to work-study programs. As long as all Federal funds distributed under the specific work-study application are earmarked for payment to students, LEAs may use other Federal funds for local administrative costs pursuant to the methods described in § 104.307.

§ 104.523 Work study eligibility.

Comment. A commenter asked whether work study programs could be administered by local educational agencies only. This com-

menter stated that it should be permissible for the State board to administer the program if the State board directly operates the school.

Response. Section 121(a) of the Act limits the administration of work study programs to local educational agencies. Section 104.523 of the regulation also limits the eligibility to LEAs. In order for the State board or other eligible recipients to administer work study programs, legislative relief would be necessary. Accordingly, no change is made in the regulation.

§ 104.523(c) Work study—20-hour limit.

Comment. A commenter asked whether the 20-hour limit per week in the work study program conforms to Department of Labor standards. Another commenter stated that the 20-hour limit for a student 18-21 years of age may not provide enough earnings to meet the student's needs.

Response. Since section 121(a)(3) requires the Commissioner to determine a reasonable number of hours per week that a student may be employed under a work study program, it is unnecessary to conform the 20-hour limit in § 104.523(c) to Department of Labor standards. With respect to the issue of the 20-hour limit in employment being too low, it is the Commissioner's position that an amount in excess of 20 hours per week would be potentially detrimental to the student's academic efforts. Furthermore, a ceiling of 20 hours should permit the limited resources available for work study to be shared among more students. Accordingly, no change is made in the regulation.

§ 104.531 Cooperative programs—100 percent funding.

Comment. Many commenters questioned whether all cooperative vocational education programs may receive 100 percent Federal funding or just those cooperative programs serving students in nonprofit private schools. Some of these commenters indicated that only the cooperative vocational education program described in section 122 of the Act should include nonprofit private school students.

Response. The Vocational Education Act does not provide authority for two types of cooperative vocational education programs. Any basic grant funds used by a State for cooperative vocational education programs must meet all the statutory requirements of section 122 of the Act and §§ 104.531 through 104.533 of this regulation. States may not legally circumvent these requirements by labeling "cooperative vocational education programs" as "vocational education programs" and funding the activity under section 120(b)(1)(A).

With respect to the issue of funding, the State may fund, with up to 100 percent Federal monies, those cooperative vocational education programs being carried out by LEAs which include the participation of students from nonprofit private schools. This does not mean that the program must be designed exclusively for students in nonprofit private schools; but rather, if the program includes such students, it may be funded up to 100 percent. In order to clarify this matter in the regulation, § 104.305(a)(1) is amended to read, "Cooperative vocational education programs which include students enrolled in nonprofit private schools * * *."

§ 104.531(b) Cooperative education priorities.

Comment. A few commenters perceived some difficulty in LEAs utilizing the funding priority in § 104.531(b) (areas that have high rates of school dropouts or youth unemployment) because of the consolidation of cooperative vocational education programs under

the grant. The issue raised is whether the LEA, having received a grant from the State, must give priority in funding cooperative education programs to areas that have high rates of school dropouts or youth unemployment.

Response. Even though the cooperative vocational education program has been consolidated under the basic grant, section 122(e) requires the State to give priority to funding cooperative programs to areas that have high rates of school dropouts or youth unemployment. The State must give priority to the applications of local educational agencies on the basis of the statutory criteria. The determination of the amount of funds earmarked for cooperative programs, however, is entirely within the domain of the State. If the State decides to fund cooperative programs, based on the local applications, then any Federal funds encumbered for cooperative programs must be expended by the LEA in accordance with the local application it submitted. In order to clarify the fact that the funding determination for cooperative programs is based on the local application, the language in § 104.531(b) has been amended.

§ 104.532 Cooperative assurances.

Comment. A commenter suggested that the list of assurances in § 104.532 be deleted because the Act does not require these assurances to be contained in the five-year State plan.

Response. Section 122 of the Act requires that cooperative vocational education programs conducted by LEAs include a variety of assurances enumerated in paragraphs (a) through (h). In order to ensure that the State adheres to these provisions when funding proposed cooperative programs described in the local application, the Commissioner believes it is imperative that the assurances be included in the approved five-year State plan. No change is made in the regulation.

§ 104.532 Cooperative programs—reimbursement of added costs.

Comment. Many commenters questioned the meaning of the provision in § 104.532(c) for reimbursement of added costs to employers for on-the-job training of students. Some of these commenters cautioned against reimbursing employers for students' mistakes on the job.

Response. This provision relating to the reimbursement of employers for the added costs has been a part of the cooperative program since 1968. The provision entitles the employer to receive the necessary reimbursement in the event the employer is faced with additional costs to his or her business because of such factors as the participating of many students or the participation of disadvantaged or handicapped students. For example, if a number of students are placed in a business establishment and the employer assigns employees to supervise those students while they are on the job then the employer may be entitled to be reimbursed for the added cost of the time the employees supervise those students. No change is made in the regulation.

§ 104.532 Cooperative programs—private non-profit schools.

Comment. One commenter pointed out that the proposed regulation governing the participation of students in nonprofit private schools in cooperative vocational education programs is taken almost verbatim from the corresponding statutory language. This commenter stated that the regulation ignores the specific concerns expressed by the House Committee on Education and Labor in H.R. 94-1085 at page 46. In this passage the Committee urged the Office of Education

to take more vigorous steps to implement the statutory provisions for the funding of programs involving students enrolled in nonprofit private schools. Without further elaboration in the regulation to reflect these concerns, this commenter believes that there will not be adequate safeguards to assure that eligible students enrolled in nonprofit private schools will participate in the programs on an equitable basis.

Response. The comment is accepted. A new regulation, § 104.533, is added to the section on cooperative vocational education programs to reflect the language contained in the House Report. In accordance with this regulation, the State must consult with the appropriate nonprofit private school officials at the State and local levels in order to make provision for the participation of students enrolled in nonprofit private schools. In addition, LEAs receiving funds for cooperative programs shall identify the eligible students, assess their needs, and provide them with the type of programs and services which will most effectively meet their needs. The personnel, materials and equipment necessary to provide these cooperative vocational education programs and services shall remain under the administration, direction and control of the LEA.

§ 104.532 Cooperative programs—on-the-job training.

Comment. Commenters expressed strong disapproval of the omission in § 104.532 of two important on-the-job training requirements which were included in the regulations (§102.98) implementing the 1968 legislation. These requirements would insure that the cooperative program provide on-the-job training that:

1. "Employs and compensates student-learners in conformity with Federal, State, and local laws and regulations and in a manner not resulting in exploitation of the student-learner for private gain"; and

2. "Is conducted in accordance with written training agreements between local educational agencies and employers". According to these commenters, the cooperative vocational programs may be converted into a job-placement type of program with less emphasis on high quality, bona fide cooperative programs. Without the structure of the training agreement, LEAs may increase the pupil-teacher ratio, increase the class size, and add responsibilities for the teacher-coordinator. Non-compensation of the student-learner may have an adverse effect on liability in case of injury to the student, and there would be no employer-employee relationship under State workmen's compensation laws.

Response. The comments are accepted and the regulation is amended to reflect the requirement for compensation and written training agreements. These requirements were inadvertently omitted from the NPRM. The Commissioner agrees with the point of view expressed by these commenters that the omission of these two requirements may have a detrimental effect on the overall quality of the cooperative vocational education program. It should be noted, however, that whereas the former regulation required the written training agreements to be submitted to the State for filing with the local application, this submission is not required by this regulation. The State shall only provide an assurance of these two requirements along with the other assurances set forth in § 104.532.

§ 104.541 Energy education—secondary level.

Comment. Several commenters objected to the language in § 104.541 which provides

that funds may be used for grants to postsecondary institutions for energy education. These commenters raised serious questions as to the exclusion of energy education programs from secondary schools. Some of these commenters stated that students who have no opportunity for postsecondary training deserve, nevertheless, as much chance as possible to get good training. Other commenters pointed out that their States already have successful energy education projects at the secondary level.

Response. The language of the regulation is based directly on section 123 of the Act which provides for grants to postsecondary institutions. Neither this statutory provision nor § 104.511 of the regulation has been viewed as limiting the funding of those energy education programs which may be characterized as vocational education programs exclusively to postsecondary institutions. In the event an LEA has incorporated an energy education program into its regular vocational education curriculum at the secondary level, the LEA may use funds it receives under its local application to support this program. It is imperative, however, that the energy education program at the secondary level be considered a vocational education program under section 120(b)(1)(A) and not under section 120(b)(1)(D) of the Act.

§ 104.543 Solar energy.

Comment. A few commenters objected to the fact that the regulation provides for the support of programs for solar energy but makes no mention of other energy areas such as oil shale. Other commenters stated that training limited only to installation of solar energy equipment is too narrow.

Response. Although the regulation follows the Act very closely in this new and emerging area, it was not intended to exclude vocational training in other energy areas such as oil shale, or hydroelectric power. Neither was it intended to exclude training in the operation and maintenance of solar and other energy producing equipment. As long as the training program may be characterized as vocational education under section 120(b)(1)(A), Federal funds may be used to support the program. No change is made in the regulation.

§ 104.552 Location of vocational facilities.

Comment. One commenter stated that many area vocational schools constructed with Federal funds serve racially identifiable populations and areas, often to the detriment of central city school districts which serve predominantly non-white student populations. This commenter recommended that the regulation be amended to require the State board to act affirmatively to ensure equal educational opportunities for all students.

Response. Since the construction of area vocational schools is an authorized activity under section 120 of the Act, the sites of the schools are chosen at the discretion of the State and LEA. However, the nondiscrimination provisions in 45 CFR Part 80, which effectuate Title VI of the Civil Rights Act of 1964 are binding on the State. Section 45 CFR 80.3(b)(3) provides that in determining the site or location of a facility, a recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the grounds of race, color or national origin. Furthermore, if the State makes Federal funds available to an eligible recipient for construction of a vocational facility, the funds must be distributed on the basis of the funding formula described in Section 106(a)(5) of the Act. Under this formula, priority must be given to eligible recipients located in economically depressed areas and areas

with high rates of unemployment. Accordingly, Federal funds used for construction must be distributed to communities in economically depressed areas such as central city school districts.

With respect to the issue of equal educational opportunities for all students and admission policies, Title VI of the Civil Rights Act and Title IX of the Education Amendments of 1972 prohibit discrimination on the basis of race and sex. Since these provisions are binding on all institutions receiving Federal assistance, vocational facilities constructed with Federal monies may not adopt discriminatory admission policies. Thus, no change is made in the regulation.

§ 104.571 Provision for stipends.

Comment. Many commenters suggested that since Federal vocational education resources are so limited, the use of funds to pay stipends to students is highly questionable. These commenters believe that the available dollars should be spent to upgrade and maintain existing programs and provide for expansion.

Response. Although section 120 of the Act allows for the provisions of stipends, the decision to permit funds to be earmarked for stipends lies within the discretion of the individual States. Since the Act provides the State with this option, no change is made in the regulation.

§ 104.581. Placement services.

Comment. A commenter suggested that the language of § 104.581 be revised to include guidance and counseling explicitly under the section of the basic grant which permits funding of placement services for students who have successfully completed vocational education programs.

Response. Section 120(b)(1)(H) of the Act permits the expenditure of subpart 2 funds for placement services if there is inadequate funding in other programs providing similar activities, or other services are inadequate to meet the needs of the State. Although placement services are an integral part of guidance and counseling, the Act does not allow section 120 funds to be used for all activities under the general heading of guidance and counseling. Since the regulation conforms to these statutory limitations, no change is made in the regulation.

§ 104.581 Placement services for completers.

Comment. A few commenters were critical of the language in § 104.581 which provides placement services for students who have successfully completed the vocational education program. These commenters have urged that the placement services be made to all students who have enrolled in a vocational education program regardless of whether the program is completed or not completed.

Response. The language in § 104.581 is based directly on section 120(b)(1)(H) of the Act which limits the eligibility of this activity to "students who have successfully completed vocational education programs." To expand the eligibility would contravene both the Act and the legislative history. Thus, no change is made in the regulation.

§ 104.591 Industrial arts—mandatory funding.

Comment. A few commenters asked whether a State could legally refuse to make Federal funds available for industrial arts programs.

Response. Although industrial arts is an authorized activity under section 120 of the Act, the matter of funding such programs lies within the discretion of the State. There is no requirement in the Act that each spe-

cific program enumerated in section 120 be funded. No change is made in the regulation.

§ 104.591 Industrial arts for the disadvantaged and handicapped.

Comment. A commenter asked whether prevocational and exploratory programs of industrial arts programs designed for the handicapped and disadvantaged may be charged against the section 110 minimum percentages.

Response. Prevocational and exploratory programs in industrial arts are permissible expenditures under section 120 of the Act. Since expenditures for all programs, services and activities under section 120 may be applied against the minimum percentage requirements for the handicapped and disadvantaged in section 110, the cost of prevocational and exploratory programs in industrial arts may be charged against the section 110 minimum percentages. No change is made in the regulation.

§ 104.592 Industrial arts—sex stereotyping.

Comment. Many commenters stated that industrial arts programs traditionally have discriminated against women by denying them entry into male-intensive fields. According to these commenters, female students encountering discrimination at the introductory vocational level are less likely to develop an interest later in nontraditional vocational courses and are handicapped when they try to enter vocational programs which require prerequisite skills and courses acquired in industrial arts programs. These commenters have recommended that, since participation in industrial arts programs can provide a crucial opportunity for introduction of women to the higher paying industrial and technical occupations, the regulation should require that industrial arts programs contribute to the reduction of sex stereotyping in the overall vocational education programs.

Response. The comment is accepted. Section 120(b)(1)(I) provides for the support of industrial arts programs which will assist in meeting the purposes of the Act. One of the primary purposes set forth in the declaration of purpose, section 101, is the development of programs to overcome sex stereotyping; therefore, the references to the purpose of the Act of overcoming sex stereotyping should be made explicit in the regulation. Accordingly, § 104.592 has been amended to reflect this concern.

§ 104.601 Support services for women.

Comment. Many commenters expressed concern with this section of the regulation because it only singles out problems related to women. Some of these commenters believe that, inasmuch as the Federal law is designed to eliminate sex bias, this regulation violates Title IX which provides that no program can discriminate against either sex. Others recommended that the regulation provide support services for men who enter programs designed to prepare persons for employment in jobs which have traditionally been limited to women.

Response. One of the major conclusions reached by Congress during its two years of hearings on the Vocational Education Act is that the inferior position which women now hold in the labor market is reinforced by the type of training programs available to and selected by them. Consequently, the legislation was drafted in a way to attempt to solve this problem. One of the key provisions on this matter incorporated into the Act was the section 120(b)(1)(J) program of support services for women. Section 104.601 of the regulations is based on this statutory provision. It should be noted, how-

ever, that support services for men (e.g. counseling, placement) are reimbursable under other sections of the Act. Thus, no change is made in the regulation.

§ 104.602(a) Support services for women—counseling.

Comment. A commenter suggested the language in § 104.602(a) be amended to include counseling on the ways to overcome the difficulties encountered in enrolling in non-traditional programs.

Response. The comment is accepted. Mere counseling on the problems involved in enrolling in non-traditional programs is inadequate if these problems are to be solved. Therefore, § 104.602(a) has been rewritten to provide for counseling on the ways of overcoming the difficulties which may be encountered by women in these programs.

§ 104.602(b) Support services for women—job development.

Comment. A commenter questioned whether this type of service was limited only to women who are already enrolled in non-traditional programs.

Response. Since the wording of this regulation may give the impression that the service is available only to women directly enrolled in non-traditional programs, the regulation has been clarified so that the service will be available also to women entering the programs or interested in the programs. This revision is necessary because part of the problem women encounter is overcoming previous socialization and barriers to entry in these programs.

§ 104.612(b) Standards for day care services.

Comment. Many commenters objected to the requirement in § 104.612(b) that day care services be governed by applicable standards of State law. Some of these commenters pointed out that certain States presently have no such standards. Some requested that all State standards be certified, and others requested clarification and guidance on the expenditure of these funds.

Response. In order to develop a degree of uniformity in the expenditure of funds for day care services, the standards set forth in the Federal Interagency Day Care Regulations, 45 CFR Part 71, will govern the provision of day care services. Accordingly, the reference in § 104.612(b) to the standards imposed by State law has been deleted.

§ 104.621(a) Meaning of dissolution of marriage.

Comment. A commenter asked whether the special programs for persons who had been homemakers but who now, because of dissolution of marriage, must seek employment apply only to divorced individuals.

Response. The term "dissolution of marriage" is not to be interpreted only in the strict sense of divorce. Vocational training is available to the homemaker who has experienced a separation, annulment or any other type of dissolution of marriage. No change is made in the regulation.

§ 104.622(a) Instructional supplies.

Comment. A commenter suggested that the language in § 104.622(a) "repair of instructional supplies" be changed to "repair of instructional equipment" because supplies are not normally repaired.

Response. The comment is accepted. The Commissioner agrees that since supplies are not normally repaired, the substitution of the term equipment would be appropriate.

§ 104.633 Residential schools—discrimination.

Comment. A commenter requested that the standards of Title VI of the 1964 Civil

Rights Act be substituted for the present language which provides that funds may not be used for schools in which students are segregated because of race. Another commenter suggested that a new paragraph (c) be added to prohibit the use of funds for schools where there are different standards for admission based on sex.

Response. With respect to the matter of race, the regulation repeats the statutory provision that no funds may be used for residential vocational schools in which students are segregated because of race. Title VI provisions, however, are also applicable to the entire program and are referenced in 45 CFR 100b.262 of the General Education Provisions Regulations (GEPR). Also applicable are regulations in 45 CFR Part 84 which effectuate section 504 of the Rehabilitation Act of 1973. In addition, Title IX, also referenced in GEPR, prohibits the adoption of different standards for admission based on sex. Therefore, no change is made in the regulation.

SUBPART 3—PROGRAM IMPROVEMENT AND SUPPORTIVE SERVICES

§ 104.701 Authorization for program improvement and supportive services.

Comment. A commenter stated that § 104.701 should read that a State shall use "up to 20 percent" for program improvement and supportive services, and that a State is not required to use the full 20 percent for these activities.

Response. The Act specifically states "20 percent" and not "up to 20 percent." This is not a matter of discretion. The State must expend 20 percent of its funds for activities under Subpart 3. Funds not obligated for Subpart 3 may be carried over under the Tydings Amendment (section 412(b) of GEPA) for one year and, if not obligated during that year, would revert to the government. No change is made in the regulation.

§ 104.703 Research coordinating unit (RCU).

Comment. Many commenters stated that the Act permits a State to establish a research coordinating unit, and that it is not mandatory for the State to do so. Commenters recommended that the regulation be clarified.

Response. The Act states that a State "may" (not "shall") use the funds for the establishment of a research coordinating unit. However, if a State is to use any funds for research, exemplary and innovative programs, or curriculum development, it must establish a research coordinating unit in order to do so is correct as written. No change is made in the regulation.

Comment. A commenter stated that the Act stipulates that the research coordinating unit is to contract for research, exemplary and innovative programs, and curriculum development, and that the research coordinating unit may perform directly the research activities, but not the exemplary and innovative programs nor the curriculum development activities.

Response. The Technical Amendments and the legislative history of the Technical Amendments (Senate Report No. 95-142) make it clear that the RCU may perform all functions, research, exemplary and innovative programs, or curriculum development functions itself or may contract for the functions. Section 104.705, 104.706, and 104.708 are amended accordingly.

Comment. Two commenters recommended that the term "unit to coordinate research" be substituted for "research coordinating unit."

Response. The Act consistently uses the term "research coordinating unit." However, a State could call its research coordination unit by another title if it so desired. No change is made in the regulation.

Comment. A commenter suggested that the research coordinating unit be responsible for the vocational education personnel training activities as well as the research, exemplary and innovative programs, and curriculum development.

Response. There is no legal basis in the Act for requiring the RCU to be responsible for vocational education personnel training. A State may, if it chooses, charge the RCU with responsibility for coordination of vocational education personnel training. No change is made in the regulation.

Comment. Several commenters stated that the program improvement funds are a part of the State grant and must be governed by the State plan, and it is the responsibility of the State board, not the research coordinating unit, to develop the State plan. Commenters recommended that the regulation clarify the roles of the State board and the RCU.

Response. The RCU is not responsible for the development of the State plan or the comprehensive plan of program improvement. The development of these documents is the responsibility of the State board. Section 104.703(c) is amended to clarify the role of the RCU.

Comment. Several commenters were concerned that the regulation did not adequately control possible duplication of efforts in the State, and that abstracts of planned projects should be submitted to the National Center for Research in Vocational Education and the U.S. Office of Education.

Response. Section § 104.703(e)(1) requires that two copies of approved projects be submitted to the National Center and to the Commissioner. It would be an undue burden on the States to have to submit abstracts of planned projects. No change is made in the regulation.

§ 104.704 Contract requirements.

Comment. A commenter recommended that "demonstrate a reasonable probability" be defined.

Response. The Act does not define the expression "demonstrate a reasonable probability." The burden is on the applicant to set forth a reasoned probability that the project will result in usable improved teaching techniques or curriculum materials. Since the expression is not defined in the regulation, the State must make the determination of "reasonable probability." No change is made in the regulation.

Comment. Two commenters recommended that the words "instructional programs" be substituted for "teaching techniques or curriculum materials."

Response. "Teaching techniques or curriculum materials" is taken directly from the Act. Substituting "instructional programs" would apparently change the intent of the Act. Thus, no change is made in the regulation.

§ 104.705 Research programs.

Comment. One commenter recommended that States should be permitted to use results of projects that were not supported with vocational research funds.

Response. The recommendation is accepted. It is clear that the intent of the legislation is not to restrict the dissemination activities to the results of projects that were supported with vocational education funds. Section 104.705(5) is changed to implement this recommendation.

Comment. A commenter recommended that the following be added to § 104.705(2) "and programs and projects for occupational and vocational guidance which utilizes the services of certified guidance counselors. This should include programs where training and retraining of guidance personnel can be effectively evaluated as well as programs

which directly provide guidance counseling and placement services as part of the vocational education effort."

Response. The research activities listed in this regulation are taken directly from the Act. Under this present authority, the State may evaluate the effectiveness of training and retraining of guidance personnel or other personnel. No change is made in the regulation.

§104.706 Exemplary and Innovative Programs.

Comment. A commenter recommended that programs designed to facilitate the employment of older people, including people over 65 years of age be included in the list of possible uses of exemplary and innovative funds.

Response. Although older people are not separately identified as persons who would benefit from exemplary and innovative projects, they clearly are included. No change is made in the regulation.

Comment. One commenter recommended that §104.706 give special consideration to four-year postsecondary institutions as contractors for the funds for exemplary and innovative programs.

Response. Although there is no legal basis in the Act for giving special consideration to four-year postsecondary institutions as contractors, they are not excluded. No change is made in the regulation.

§104.708 Curriculum development.

Comment. Several commenters questioned why the research coordinating units must do the contracting for the curriculum development effort.

Response. Section 133(a) of the Act, as amended by the Technical Amendments, clearly states that the contracts for curriculum development are to be made by the research coordinating units. No change is made in the regulation.

Comment. A commenter recommended the phrase "sex stereotyping" be added after "sex bias" in §104.708(c).

Response. The recommendation is accepted. It was an oversight in the proposed regulation to have left out "sex stereotyping."

§104.761 Qualifications of counselors.

Comment. A commenter recommended that the regulation associated with the administration, supervision, conduct, and design of vocational guidance and counseling programs and services set forth the qualifications of personnel to be supported by available funds. This would include setting minimum professional standards for counselors. Administrators and practitioners should be required to meet the certification standards for practicing counselors.

Response. Since the current law does not set forth specific qualifications for these personnel and the criteria will vary from State to State, the States have discretion to establish their own certification standards. No change is made in the regulation.

§104.761 Needed personnel for guidance and counseling.

Comment. A commenter indicated that vocational guidance and counseling are vastly needed to improve vocational education programs. However, guidance and counseling personnel cannot be expected to provide all the vocational education services as outlined in the regulation. Other personnel and funds should be available to coordinate services.

Response. It is expected that the Federal funds earmarked by the State to support vocational development and guidance under this section of the Act will supplement the State's ongoing effort to improve the guid-

ance, counseling, placement and follow-up services offered to their students. No change is made in the regulation.

§104.763 Activities eligible for funding.

Comment. Several commenters recommended a rephrasing of the statement, "funds made available to a State under the vocational guidance and counseling program (Section 134 of the Act) shall be used to support one or more of the following * * *." Various substitute language was suggested by the commenters for the phrase "to support one or more of the following * * *." In most instances, the commenters offered recommendations that, if put into the regulation, would assure the funding of specific activities and in some cases each of the eight activities listed in the Act.

Response. The Technical Amendments make the intent of Congress clear on this issue. The language of the Technical Amendments is "shall include one or more of the following activities * * *." No change is made in the regulation.

§107.763 Organization of vocational guidance activities.

Comment. A substantial number of commenters expressed the opinion that while they agreed that funds allocated under Section 130(a) shall be used to support one or more of the eight activities listed in section 134 of the Act, they questioned the reorganization of the eight activities into five as proposed in the NPRM. The commenters preferred for reason of interpretation that the eight activities be enumerated in the regulation as they appear in the Act.

Response. The major purpose for reorganizing the eight groups of activities listed in the Act into five, with appropriate subgroups, was to simplify and make clearer the meaning of the Act. Judging from the many comments received from the public on this regulation, the purpose for regrouping was not achieved. Therefore, the recommendation of the commenters is accepted, and §104.763 is changed to conform to the language of the Act.

§104.763 Eligibility for placement and follow-up services.

Comment. Several commenters raised questions about the meaning of educational placement and job placement services, and which groups or individuals are eligible to receive funds for this activity under the Act.

Response. The law provides funds for educational and job placement services, including follow-up services, for high school, college, and university students. Educational and job placement services and follow-up is one of the eight vocational guidance and counseling activities included in the Act. The Technical Amendments make it clear that funds shall be used for one or more of these eight activities, and that the one or more activities funded shall be determined by the State. No change is made in the regulation.

§104.763 Placement and follow-up services.

Comment. A commenter recommended that the regulation specify that placement and follow-up services are concerned with the occupational programs in secondary schools, area vocational schools, community colleges, and baccalaureate or higher degree-granting institutions.

Response. The current language of §104.763 (3) makes it clear that all the groups identified by the commenter are eligible for placement and follow-up services. No change is made in the regulation.

§104.764(a) Special emphasis.

Comment. A commenter expressed the opinion that the term "counselor" as used in this regulation could be misinterpreted or puzzling and might pose a problem regarding official counselor qualifications. This commenter recommended the deletion of the phrase "into schools as counselors * * *," and the use of the phrase "into schools as vocational career advisors for students."

Response. The language of the Act is "to bring individuals with experience in business and industry, the professions, and other occupational pursuits into schools as counselors or advisors for students." Both the Act and the regulation allow the local schools the flexibility to bring these individuals in as advisors. No change is made in the regulation.

VOCATIONAL EDUCATION PERSONNEL TRAINING

§104.774 Other types of training.

Comment. A commenter asked whether funds available under section 130 of the Act could be used to provide training for competency-based programs, teacher certification programs, vocational degree programs, and vocational leadership development programs. This commenter recommended a regulation stipulating that locally-oriented evaluation and needs assessment must be the basis for determining the uses to be made of vocational education personnel training funds.

Response. The State, through its five-year State plan and annual program plan, has the option of providing any kind of training that it believes will improve the quality of instruction, supervision, or administration of vocational education. The State may choose to base its determinations on local evaluation and local needs assessments. The recommendation that the State's options in this matter be limited by regulation is not accepted because there is nothing in the Act on which to base such a limitation. No change is made in the regulation.

Comment. One commenter recommended that §104.774(b) be amended to read "In-service training * * * to overcome sex bias 'and sex stereotyping' in vocational education programs."

Response. The recommendation to add "and sex stereotyping" is accepted, because the Congress, in the Act's declaration of purpose (Section 101.3), emphasized equal opportunity in vocational education for persons of both sexes, and because it is not reasonable to suppose that after the Congress included overcoming both sex discrimination and sex stereotyping in the declaration of purpose, it meant to exclude the latter concern in programs of vocational education personnel training.

Comment. One commenter wanted the regulation to include, specifically, training in curriculum development.

Response. The recommendation is not accepted because such training may be included under the non-exhaustive list in §104.774 at the option of the State. No change is made in the regulation.

§104.774 Handicapped or disadvantaged students.

Comment. A commenter recommended that the regulation include, as an allowable category, training to improve vocational education for handicapped and disadvantaged persons; another commenter similarly wanted to include, as a category, training to deal with "learning disabilities."

Response. Such training may already be included under the non-exhaustive list in §104.774 at the option of the State. Nevertheless, because of the emphasis in the Act on these categories, the regulation has been amended to include them specifically.

GRANTS TO OVERCOME SEX BIAS

§ 104.792 Overcome sex bias "and sex stereotyping."

Comment. One commenter requested that "sex stereotyping" be added to § 104.792(a).

Response. The recommendation is accepted. Although the title of section 136 in the Act uses only the term "sex bias," the body of that section refers to "sex stereotyping and bias." It appears that "sex stereotyping" was inadvertently omitted from the regulation.

§ 104.793 Types of projects.

Comment. Many commenters felt that the activities listed were too limiting and examples should be deleted altogether. Many others, however, felt that the list was not comprehensive enough. Of these commenters, most wanted to add "programs to overcome sex bias" to the list.

Response. The activities listed in § 104.793 are intended to be examples, and the list is not exhaustive. Section 136 of the Act, which authorizes grants to overcome sex bias and sex stereotyping, falls under subpart 3, Program Improvement and Supportive Services; therefore, funds used under this section must go for support or improvement of vocational education programs. Insofar as programs to overcome sex bias fall into this category, they may be supported by funds under this section. No change is made in the regulation.

§ 104.793(e) "Assisting girls and women" in selecting careers.

Comment. Several commenters felt that § 104.793(e)(2) should not be restricted to women and girls and that the regulation should read: "Assisting persons in selecting careers." The rationale they gave for requesting the change was that males, too, need assistance in selecting careers according to their interests rather than according to stereotypes. They felt that, in leaving males out, the regulation was "sexist."

Response. The recommendation is accepted to include males as well as females. Paragraph (e) is rewritten to include assistance for all persons in selecting careers since sex stereotyping is not limited to females.

SUBPART 4—SPECIAL PROGRAMS FOR THE DISADVANTAGED

§ 104.801 Girls and women as disadvantaged.

Comment. A commenter has recommended that "because girls and women traditionally have been channeled into educational tracks which have not enabled them to acquire the prerequisites to pursue training for a wide range of occupations," "girls and women" should be added as a group who require special services in order for them to succeed in vocational education programs. The same commenter recommended an additional criterion, "those who lack prerequisites as a result of previous discrimination."

Response. Since the criteria for identifying those who are academically disadvantaged already include the lack of reading, writing, or mathematical skills, and failure to perform at the necessary grade level, adding a specific category for "girls and women" as disadvantaged (even those who have the necessary skills and perform at the necessary grade level) would seem unnecessary. Therefore, this recommendation is not accepted. No change is made in the regulation.

§ 104.802(a) Youth unemployment and school dropouts.

Comment. A commenter suggested that although the phrase used in section 140(b)(1) of the Act is "youth unemployment and school dropouts," the word "or" should be

used in the regulation as both criteria need not be met.

Response. The recommendation is accepted. In order to provide a degree of consistency in the regulations for funding those programs which require prioritizing of local applications on the basis of youth unemployment or school dropouts (the work study program, the cooperative vocational education program, and special programs for the disadvantaged), the word "and" in § 104.531(b) and § 104.802(a) has been changed to "or." Funds may be used in areas of either high concentration of youth unemployment or high concentration of school dropouts.

§ 104.804 Academic disadvantage.

Comment. A commenter pointed out that, since academic handicaps are of such a variety, detection of academic handicaps, and symptoms of underachievement could be made earlier by a school counselor than by an instructor. The commenter recommended that qualified counseling be provided at the elementary school level and through the implementation of programs for the disadvantaged.

Response. The regulation for subpart 4, "Special Programs for the Disadvantaged," does not state who shall apply the criteria of "disadvantaged" to a particular individual. By not prescribing who must apply the criteria, the State or the LEA has the full range of options. The student, the student's parents, the student's teacher, and the school's guidance counselor may all be involved in the decision. Individual guidance and counseling for the academically and economically disadvantaged is very important. Elsewhere in the Act (section 130) and in the regulations (§§ 104.761-764) the importance of guidance and counseling activities is stressed; however, the regulation does not require the advice of a guidance counselor in every situation. No change is made in the regulation.

§ 104.804(b)(3) Performance below grade level.

Comment. Another commenter recommended deletion of "performance below grade level" in the definition of "academic disadvantage," considering the criteria of (b)(1) or (b)(2) adequate.

Response. Since the three criteria of paragraph (b) of § 104.804 (that is the criteria in (b)(1), (2) and (3)) are alternatives, criteria (3) need not be applied by those who do not believe performance below grade level to be a valid criterion. These criteria must, of course, be applied in relation to paragraph (d)(1) and (2) in reaching a decision whether special services are necessary. Likewise, the four alternative criteria of paragraph (c) of § 104.804 must be applied in relation to paragraph (b)(1) and (2). No change is made in the regulation.

SUBPART 5—CONSUMER AND HOMEMAKING EDUCATION

§ 104.903 Occupation of consumer and homemaking.

Comment. Many commenters recommended that the regulation use the term "occupation" (singular) of consumer and homemaker even though the Act uses "occupations" (plural).

Response. The recommendation is accepted. The phrase "occupation of consumer and homemaking" has been substituted. Although the regulation follows very closely after the Act, since the persons most closely associated with administration of, or instruction in, consumer and homemaking education feel strongly that the occupation of consumer and homemaking should be

referred to in the singular, the regulation is amended accordingly.

§ 104.903(a) Consumer and homemaking education at the elementary level.

Comment. A commenter questioned the inclusion of "elementary" after the phrase "at all educational levels" because elsewhere vocational education is only for secondary, postsecondary, and adult levels.

Response. The House Report (No. 94-1085, page 50) expressly states that the program of consumer and homemaking education was expanded to include the elementary level. Therefore, no change is made in the regulation.

§ 104.904 Preference to LEAs for creative approaches in eliminating sex stereotyping in consumer and homemaking programs.

Comment. A commenter stated: "The regulations should require that State Plans include criteria for selection of applicants based on the degree to which the applicant places emphasis on the preparation of males and females for combining the roles of homemaker and wage earner. Local education agencies should receive preference for funding if they develop or utilize creative approaches for achieving this objective."

Response. This recommendation goes beyond the terms of the Act. While section 150(b)(1)(B) of the Act requires the State plan "to encourage elimination of sex stereotyping in consumer and homemaking programs by promoting the development of curriculum materials * * *" and to "prepare males and females who have entered or are preparing to enter the work of the home," the Act does not provide for preference in funding LEAs which show a creative approach in eliminating sex stereotyping. The Commissioner urges the States to encourage all LEAs to assure participation of both males and females in consumer and homemaking programs. The Act does not support criteria for competition among LEAs with preference in funding on this basis for some and the non-funding of others. Exemplary projects in consumer and homemaking education may, however, be funded by the State under § 104.706 or by the Commissioner under § 105.104(a)(2). No change is made in the regulation.

§ 104.904 Scheduling for consumer and homemaking courses.

Comment. A commenter stated: "To ensure greater availability of consumer and homemaking education programs to both males and females, the regulations must address the problem of scheduling. To implement the intent of the law there must be much greater flexibility in the scheduling of classes. Most secondary schools schedule consumer and homemaking courses during the same periods as courses which traditionally have catered to boys. Both sexes are thereby prevented from participating in the other course or both courses. The regulations should require scheduling which provides authentic options for students."

Response. I would be inappropriate for the Commissioner's regulation to require a particular scheduling of classes within a school or school system. In fact, section 432 of the General Education Provisions Act prohibits the Commissioner from exercising "any direction, supervision, or control over the * * * administration of any educational institution, school or school system * * *." A scheduling of classes, however, which prevents persons of one sex from participating in courses which have additionally catered to persons of the other sex, would be a violation of Title IX. No change is made in the regulation.

§ 104.904 Curriculum materials which address sex stereotyping.

Comment. A commenter recommended: "Regulations should state that no programs will be funded under this section unless they show evidence of using or developing curriculum materials that will address sex stereotyping and sex bias in the area they are addressing, e.g., programs for handicapped persons."

Response. Section 432 of the General Education Provisions Act, described in the previous response, also prohibits the Commissioner from exercising any direction, supervision or control over the "textbooks or other printed or published instructional materials by any education institution."

While the Act and regulation require the elimination of sex bias and sex stereotyping in curriculum materials, it would be inappropriate, and possibly illegal under section 432 of GEPA, for the Commissioner to require all schools to use textbooks or other material which specifically address sex stereotyping. On the other hand, schools must use textbooks and other material which are free from sex bias and sex stereotyping. No change is made in the regulation.

§ 104.904(d) Definition of "outreach."

Comment. A commenter recommended that "outreach programs" be defined.

Response. Section 150(b)(1)(D) of the Act and § 104.904(d) of the regulation encourage consumer and homemaking outreach programs for " * * * aged, young children, school-age parents, single parents, handicapped persons," and many others. It seems evident that consumer and home-making education programs are encouraged to "reach out" for those not normally in formal school settings. Any further definition might be limiting to the broad scope obviously intended. No change is made in the regulation.

§ 104.905 Consumer and Homemaking—guidance and counseling.

Comment. A commenter recommended that, since the Act makes many references to guidance and counseling activities, these activities are a permissible use of funds, that is, a permissible ancillary service, in consumer and homemaking education and recommends that "guidance and counseling" be added under § 104.905.

Response. The recommendation is accepted. Guidance and counseling is recognized as an ancillary service. Funds under section 150(b)(1) of the Act for the purpose of § 104.903(c)(4) may be used for guidance and counseling of students. Therefore, a new paragraph (k) has been added at the end of § 104.905 to read:

"(k) guidance and counseling."

§ 104.906 Federal share.

Comment. A commenter recommended that paragraphs (a) and (b) of § 104.906 should be reversed so that the major rule as to matching (50-50) which may apply to two-thirds of the funds is stated first, and the secondary rule (90-10 matching) which applies to (at least) one third follows.

Response. The recommendation has been accepted. The two paragraphs are reversed and rewritten accordingly.

PART 105—COMMISSIONER'S DISCRETIONARY PROGRAMS OF VOCATIONAL EDUCATION

SUBPART I—PROGRAM IMPROVEMENT

§ 105.5 Applicability of technical review criteria.

Comment. Several commenters recommended that it should be made clear that the technical review criteria in Part 105 apply to the review of applications for grants

and assistance contracts and not for procurement contracts.

Response. The recommendation is accepted. The proposed technical review criteria in the Commissioner's discretionary programs were not intended to apply to the review of proposals for procurement contracts because procurement contracts are covered by the Federal Procurement Regulations in Title 41, Code of Federal Regulations. Projects for Program Improvement under section 171 of the Act and for the Bilingual Vocational Instructional Materials, Methods, and Techniques Program under section 188 will be supported primarily through procurement contracts. A new § 105.5 is added to reference the Federal Procurement Regulations. Each Request for Proposal (RFP) will specify the criteria which will be used to select the contractor. These criteria will, of course, be consistent with the Act and the regulation. RFP's are announced in the Commerce Business Daily, not the FEDERAL REGISTER.

§ 105.101 Elimination of sex bias.

Comment. Several commenters expressed concern that there was not sufficient emphasis on elimination of sex bias and sex stereotyping in §§ 105.101-111. Two commenters suggested giving more points to projects dealing with this concern.

Response. The comments are accepted. In light of the fact that one of the major purposes of the Act is the elimination of sex bias, the weight given to this criterion in § 105.110 (k) has been increased to eight points. In addition, the concerns of sex bias and sex stereotyping will be dealt with through the setting of priorities.

§ 105.101 Emphasis on contracts.

Comment. Two commenters expressed concern that the legislative intent of emphasizing contracts over grants needs to be spelled out more clearly.

Response. The regulation now conforms to the Act with regard to this matter. Section 171(a) states that program funds are to be "used primarily for contracts, and in some cases for grants." It is clear that the program is to be administered primarily through procurement contracts rather than through grants. This mode of program administration will apply to all of the activities listed in § 105.104. No change is made in the regulation.

§ 105.102 National Center for Research in Vocational Education.

Comment. Some commenters expressed concern that the regulation did not reflect the language of the Act in terms of the regional research centers. The commenters recommended that § 105.102 be rewritten.

Response. The recommendation is accepted. The regulation is changed to read exactly as it is in the Act in regard to the regional research centers.

Comment. A commenter expressed concern that the section on the national center did not mention elimination of sex bias or sex stereotyping as a special concern.

Response. Section 171 of the Act, which is the section concerned with the national center, does not give special mention to sex bias and sex stereotyping. However, since a major emphasis of the Act is on the elimination of sex bias and sex stereotyping, it will directly affect the administration of programs of the center. No change is made in the regulation.

Comment. A commenter expressed concern that the national center will have an unfair preemptive position in competing for contracts.

Response. Even though the national center will develop planning information for the Commissioner, it will in no way establish

the priorities for the project support program to be administered by the Commissioner. The national center will not assist the Commissioner in the development of individual Requests for Proposals (RFPs). If the national center assisted in the preparation of a particular RFP, then the national center would not be eligible to compete for the contract under the RFP. The Commissioner will secure sole source procurements only in extremely limited circumstances and situations. No change is made in the regulation.

Comment. A commenter expressed concern that the national center could preempt all of the research activities to be funded by the Commissioner and none would be done through individually funded projects.

Response. The Commissioner does not plan to administer the program in a manner that would allow the center to preempt research activities. Greater resources will certainly be allocated to funding individual projects than to funding the national center. No change is made in the regulation.

Comment. A commenter expressed concern that the national center would have access to confidential financial information of competitors.

Response. The national center will not have access to confidential information that is protected by the Privacy Act or that is not included under the Freedom of Information Act. Copies of unfunded proposals would not be available to the national center. Copies of funded proposals, less those items protected by the Privacy Act, would be available to the national center if needed by the national center in order to carry out its clearinghouse functions. No change is made in the regulation.

§ 105.104 Role of States.

Comment. A commenter expressed concern that States would have too great a role in the administration of the Commissioner's discretionary projects under this section.

Response. The Act does not require that proposals requesting support from the Commissioner under the terms of section 171 be sent through the States. The Commissioner does not plan to request that proposals be sent through the States in the administration of this program. No change is made in the regulation.

§ 105.105 Eligibility of individuals.

Comment. Several commenters suggested that individuals not be included as eligible applicants.

Response. Since the Act does not exclude individuals as eligible applicants, no change is made in the regulation.

§ 105.106 Cost sharing.

Comment. A commenter objected to the statement in § 105.106 in relation to grants or contracts for program improvement: "No cost sharing is required." The objection was based on the implication, which the short sentence carries, that cost sharing will not be sought or accepted from any applicant. The commenter recommended that the sentence be reworded.

Response. This recommendation is accepted. While cost sharing is not required by the Act, an applicant may indicate it intends to contribute part of the cost of a project. The heading is changed to "cost sharing," and a new sentence is added as follows: "The Commissioner may pay all or part of the cost."

§ 105.110 Technical review criteria.

Comment. A commenter suggested that the requirement in § 105.108—that the grant will result in improved teaching techniques,

etc.—should be reflected in the technical review criteria in § 105.110.

Response. Section 105.108 sets forth a requirement of eligibility for grant applications. All applications for grants will be reviewed for compliance with this requirement, and then, only if the application meets this requirement will it be evaluated in accordance with the technical review criteria in § 105.110. No change is made in the regulation.

§ 105.110(k) *Sex bias.*

Comment. Several commenters recommended that points should be given in the review of applications for exemplary and innovative projects which seek to "eliminate," not "minimize" sex bias; in other words that the word "minimize" in paragraph (k) of the technical review criteria be changed to read "eliminate." Another commenter recommended that "sex stereotyping" be added to the criterion on sex bias.

Response. The recommendation is accepted. The sentence is amended to read: "The application provides appropriate plans to eliminate sex bias and sex stereotyping."

Comment. A commenter recommended that a separate criterion be established to give additional weight to applications for projects employing women and minorities in the planning and implementing of the project.

Response. The technical review criteria do not include a specific weighted criterion for proposed projects on which women or minorities will be employed. Section 105.110(h) does, however, include under "Staff Competencies and Experience" the "use of professional staff members from minorities and who are women." The Commissioner will review the applications in relation to the criteria listed in § 105.110, including paragraph (h) on staffing and paragraph (k) on elimination of sex bias. Therefore, no change is made in the regulation.

SUBPART 2—INDIAN TRIBES

§ 105.202(b) *Applicability of the Indian Self-Determination and Education Assistance Act.*

Comment. A commenter asked who determines the extent to which implementation of the regulation concerning the sections of the Indian Self-Determination and Education Assistance Act are relevant and practicable.

Response. The Commissioner of Education in the first instance is responsible for implementing the applicable sections. In the event that questions arise which might affect Bureau of Indian Affairs (BIA) policy, the Commissioner will consult the Bureau of Indian Affairs for guidance. No change is made in the regulation.

§ 105.203 *Definition of Indian tribe.*

Comment. A commenter stated that the definition of an Indian tribe and the section on eligibility were overly restrictive, and therefore, result in an inequity for an Indian organization comprised of Indians who reside in urban areas or who are not members of federally recognized tribes. The commenter further stated that Indian organizations that are not federally recognized are eligible for assistance.

Response. Section 103(a)(1)(B)(iii) of the Act is restrictively written with regard to the parties eligible to contract with the Office of Education. By reference, a tribe or tribal organization must comply with the definition in the Indian Self-Determination and Education Assistance Act, which requires that the tribe or tribal organization be federally recognized. Moreover, to be eligible, the tribe must be eligible to contract with the Secretary of the Interior under the Indian Self-

Determination Act of April 16, 1934.

To the extent that other Federal departments or agencies award grants or enter into contracts with Indian tribes or organizations which are not federally recognized, it is because the definitions of Indian tribe and the standards for eligibility vary. For example, the Indian Education Act defines the term Indian to include "any individual who (1) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future, by the State in which they reside." Thus, given the less inclusive definition in the Act and the Self-Determination Act, the Commissioner has no authority to fund Indian organizations which are not federally recognized. No change is made in the regulation.

§ 105.205 *Eligible applicants.*

Comment. A commenter asked if the contract program for Indian tribes and Indian organizations would preclude Indians, specifically non-reservation Indians, from participating in non-discretionary State administered programs.

Response. The Indian contract program does not preclude members of Indian tribes from participating in State administered vocational education programs. Conference Report 94-1701 (p. 215) states that the Indian contract program is not intended to relieve the States of their obligation to provide vocational education to urban Indians. No change is made in the regulation.

§ 105.211 *Review of applications.*

Comment. A commenter suggested that applications be reviewed by the National Advisory Council on Indian Education.

Response. While some programs administered under the Indian Education Act, Pub. L. 92-318, as amended, require review by the National Advisory Council on Indian Education (NACIE), the Vocational Education Act does not provide statutory authority for the review of applications by the NACIE. However, the NACIE was afforded an opportunity to review and comment upon the Notice of Proposed Rulemaking thereby allowing for input from the Indian community. It is the statutory responsibility of the Commissioner to provide for the review of applications. No change is made in the regulation.

§ 105.211 *Minimum points received by applications to be considered for funding.*

Comment. A commenter asked if applications should receive a minimum of 50 rather than 30 points to be considered for funding.

Response. The minimum number of points an application must receive to be considered for funding remains 30 points. The Commissioner feels that this lower minimum should result in a larger number of applications which may be considered for funding. No change is made in the regulation.

§ 105.211 *Technical review criteria.*

Comment. A commenter suggested that priority in contracting be accorded to vocational education programs which serve Indians in urban areas.

Response. The Act limits the eligibility of applicants to Indian tribal organizations which are eligible to contract under the Indian Self-Determination and Education Assistance Act. Therefore, urban Indian groups are not a priority group in the regulation because the Act is written so that eligibility turns on whether an Indian organization is federally recognized under the Indian Self-Determination and Education Assistance Act. However, urban Indians are eligible to participate in the regular program. No change is made in the regulation.

Comment. A commenter suggested that the regulation give consideration to the special cultural, legal, and socio-economic status of the Indian population. The commenter further suggested that program design and service delivery include: (a) The provision of basic skills training necessary to facilitate vocational training; (b) the provision of supportive services such as child care and transportation; and (c) the payment of stipends so that Indian people can afford to participate in training.

Response. Section 103(a)(1)(B)(iii) provides broad authority for the Indian contract program. Therefore, an applicant may request support for basic vocational skills training, supportive services, and stipend support. The applicant should respond to each of the technical review criteria. No change is made in the regulation.

Comment. A commenter suggested that the need section of an application should be based upon the tribe's economic development plan, including tribal manpower data.

Response. The need section of the application may include information concerning a tribe's economic development plan. However, this should not be the sole or major criterion in that the overall objectives for an economic development plan may vary significantly from the legislative intent of this Act. No change is made in the regulation.

SUBPART 3—TRAINING AND DEVELOPMENT PROGRAMS FOR VOCATIONAL EDUCATION PERSONNEL

LEADERSHIP DEVELOPMENT AWARD PROGRAM

§ 105.302 *Length of award.*

Comment. A commenter, wishing to assure an award period of adequate length to permit effective education for leadership development, recommended that § 105.302(b) be amended to assure a minimum award period of at least 24 months to each approved applicant.

Response. The recommendation is not accepted because the expressed intent of the Congress eliminated the policy which in the past has sometimes limited the duration of leadership development awards to one year. Emphasis on a minimal commitment of 24 months would tend to weaken the effect of the present regulation which is addressed to an award period of 36 months. Furthermore, it is not believed to be in the best interest of the government or of the awardee to weaken in any way the requirement in § 105.307 that the awardee perform satisfactorily and in accordance with the regulation. No change is made in the regulation.

§ 105.303 *Equitable distribution.*

Comment. Several commenters objected to the language in § 105.303 that "the Commissioner will apportion leadership development awards equitably among the States * * * for the reason that the word "apportion" gives the impression that the awards will be apportioned, by formula, in advance of receipt of applications. They recommended that the sentence be reworded.

Response. This recommendation has been accepted. Although the proposed regulation follows section 172(b)(4) of the Act closely, the language of § 105.303 of the regulation is changed to make clear that there will not be a formula allocation of awards to the States.

§ 105.304 *Post-doctoral study.*

Comment. A commenter recommended specific prohibition of awards to post-doctoral students.

Response. It is possible that a person with the doctoral degree in engineering, or any other field, might seek to become a professional leader in vocational education. Although the Act and its legislative history do

not address this point, it cannot safely be assumed that the Congress meant to preclude giving an award to such a person. No change is made in the regulation.

§ 105.304 Role of research.

Comment. A commenter recommended deletion of the phrase "or research" from paragraph (b), which would then read, "In order to receive a leadership development award the person selected shall enroll for full-time graduate study in a vocational education leadership * * *".

Response. The recommendation is accepted and the regulation is changed accordingly. Graduate study includes all of the employment categories suggested in the Act (e.g., administrators, supervisors, teacher educators, researchers, guidance and counseling personnel). Nothing in the Act warrants establishing the elements of study and research as mutually exclusive alternatives.

§ 105.305 Graduate-level study.

Comment. A commenter pointed out that although in H.R. Report No. 94-1085, p. 54, the Congress advises the Commissioner to solicit recommendations "from graduate schools offering these programs," the regulation reads "from representatives of vocational education programs in institutions of higher education." The commenter notes that the programs might or might not be at the post-baccalaureate or doctoral level.

Response. The point is well taken. However, the Commissioner prefers not to make the suggested change in order to permit and encourage solicitation of recommendations from all levels of instruction, including, the doctoral level. No change is made in the regulation.

§ 105.305 Role of the State board.

Comment. A commenter finds paragraph § 105.305(b) to be "extra-statutory and misrepresentative of H.R. Report No. 94-1085" in that it gives excessive authority to the State board.

Response. The Commissioner was keenly aware of the criticism expressed in H.R. Report No. 94-1085 and it took fully into account in drafting the regulation. In light of the legislative history, the regulation is designed to obtain advice from the State board and to use the board as a conduit for securing advice from the "other agencies." On the other hand, the total role of the State board has been changed because the applications are sent directly to the Commissioner (rather than through the State boards, as in previous years) and will be reviewed independently by the Commissioner's designees in the Office of Education. For these reasons, the recommendation to revise the regulation is not accepted.

§ 105.305 Advice from others.

Comment. Several commenters objected to having the State board forward to the Commissioner only a summary of its own advice and that of the "other agencies" and "representatives," on the grounds that the authority to prepare such a summary increases unduly the role of the State board.

Response. In order to clarify the role of the State board, the regulation is revised to require the State board to forward the complete statement of advice from each such agency and representative.

§ 105.307 Part-time employment.

Comment. A commenter wanted the part-time employment referred to in § 105.307(a) (3) to be limited to 50 percent of the awardee's time, and wanted a regulation to clarify how approval for part-time employment is obtained.

Response. Experience with the leadership development award program in previous years shows that there are many patterns of part-time employment in terms of hours per day or week and number of weeks or months. It has not seemed feasible to attempt to foresee them all and regulate accordingly. Therefore, the matter will be handled as in the past, by individual request from each participating institution to the Commissioner and review of each request on its merits. No change is made in the regulation.

§ 105.309 Application review criteria.

Comment. Many persons took exception to the proposed criteria for judging applications. One wanted the weights of the criteria changed to favor younger, less experienced applicants. Several commenters wanted much more weight given to evidence of intellectual ability as shown by academic achievement. One pointed out the similarity of criteria (b) *Leadership potential and criterion*, and (e) *Human relations skills*, which would tend to favor certain candidates. Several wanted the Commissioner to set minimum levels which must be attained for each criterion. Several perceived that the proposed criteria would result in discrimination against women and racial minorities, and would favor older persons with "stereotyped" accomplishments. One commenter recommended that in paragraph (g) of § 105.309 special consideration be given to women. One commenter urged elimination of the entire section on review criteria.

Response. Since the Commissioner must review all applications and must, of necessity, use criteria for that purpose, it is the policy of the Office of Education to publish the criteria in advance.

Most of the other comments and recommendations relate to the weight assigned to each of the criteria. In view of the comments, a reconsideration of the weighting has resulted in several revisions set forth in the final regulation.

The weight given to evidence of academic ability has been increased, and the weight given to communication skills has been reduced. The criterion (e) *Human relations skills* has been eliminated as such and included under criterion (b) *Leadership potential* as skill in interpersonal relations.

Neither the Act nor its legislative history provides any support for weighting of the criteria to favor either younger or older persons. Consequently, the recommendations in this regard were not accepted.

§ 105.309 Application review criteria—academic ability.

Comment. A commenter recommended changing criterion (a) *Academic ability* to require the applicant to submit transcripts of grades earned in college, including graduate courses, instead of leaving this submission to the option of the applicant. The same commenter suggested that item (3) of the same criterion be deleted, on the grounds that skill aptitude tests are not given at the graduate study level.

Response. The recommendation to require submission of transcripts is accepted and the regulation changed accordingly. A record of the applicant's grades is indispensable for proper review of his or her qualifications. The second recommendation, to delete the item referring to skill aptitude test, is not accepted, because submission of such information is optional, and because the applicant's scores on such tests, irrespective of when the tests were taken, is evidence of the applicant's abilities.

§ 105.310 Number of participating institutions.

Comment. A commenter recommended that the number of approved institutions be limited to twenty. The commenter saw this as a means of helping to assure that only institutions with highest quality doctoral level programs would be assigned leadership development awardees. The recommendation was perceived also as a way to assure a "critical mass" of awardees at each participating institution. A commenter with the same concern wanted the number of awardees per institution to be no fewer than ten and no more than twenty.

Response. While these concerns are shared by the Commissioner, § 105.310 was not made more specific because of the need to accommodate possible fluctuations in the level of funding allocated to this program. It is believed that, by judicious use of the right to redistribute award recipients among approved institutions, the effect desired by both commenters will be achieved, whatever the level of funding of the program. No change is made in the regulation.

§ 105.311 Comprehensive graduate programs.

Comment. A commenter recommended that a participating institution should be required to offer at least four doctoral programs in supporting technical disciplines of agriculture, business administration, engineering, health sciences, and home economics, plus doctoral level programs in sociology, psychology, computer science, philosophy, and an area of "communications." The same commenter recommended that the regulation require a much broader, more comprehensive graduate program of vocational education than is now stipulated.

Response. The recommendation is not accepted. Despite the desirability of the recommended program, to require such a program would exclude from participation in the leadership development program many of the institutions which have already demonstrated their capabilities for training leaders. In setting the standards presently required in the proposed regulation, the Commissioner has in mind first the interest of the student awardees, who will legitimately have preferences among institutions, in respect to distance from their present homes, etc. The Commissioner's decision to make no change in the proposed requirements for eligibility of institutions is based also on the grounds that more restrictive criteria for eligibility would tend to enmesh the leadership development program unduly into the specific doctoral requirements of traditional technical fields. No change is made in the regulation.

VOCATIONAL EDUCATION CERTIFICATION FELLOWSHIP PROGRAM

§ 105.431 Source of funding.

Comment. A commenter advised against having the certification fellowship program "compete for funds" with the leadership development program, and recommended that the former program be supported with funds provided to the States through Section 135 (§ 104.771 of the regulation). The commenter reasoned that the need for leadership development awards would so lessen the "critical mass" of awardees as to lose the benefits of group interaction.

Response. Funds for both the State-administered Vocational Education Personnel Training (§§ 104.771-104.776) and the Commissioner's two discretionary programs, *Leadership Development* (§§ 105.301-105.312) and *Certification Fellowships* (§§ 105.431-105.443), are authorized by Section 103 of

the Act. Section 103 requires that a specified portion of the appropriated funds be reserved for use by the Commissioner and that the balance be allotted to the States. The Commissioner's portion and the State's portion cannot be modified without a Congressional amendment. Therefore, funds available for the State-administered part under Section 135 cannot be used to support the Commissioner's Vocational Education Certification Fellowship Program. No change is made in the regulation.

§ 105.431 *Teacher or educators.*

Comment. Two commenters recommended that in § 105.431 the term "vocational educator" should be changed each time it occurs to "vocational teacher."

Response. Although there is merit in the suggestion for use of the more widely used term, teacher, the recommendation is not accepted. The Congress used "educator" in the statute, and without compelling reasons to the contrary, the Commissioner prefers that the regulation use the terminology of the statute. No change is made in the regulation.

§ 105.431 *Emphasis on shortage of teachers.*

Comment. A commenter recommended that § 105.431(a) be changed to read " * * * if those teachers have skills and experience in vocational fields for which there is a need for vocational teachers and for which they can be trained * * * ". The rationale for adding the clause for which there is a need for vocational teachers is that there are some fields of vocational education which have a surplus of teachers and for which no additional ones should be trained. The commenter wanted the same change in § 105.432 (a) (1), for the same reason.

Response. The recommendation is accepted. Although the statute does not require that there be a need for vocational teachers in reference to applicants for fellowships who are certified teachers, it does contain this requirement with respect to applicants who are employed in industry. That both classes of applicants should be treated alike in this respect is supported at two points in the statute: first, section 172(c) (1) states that the fellowship program exists "in order to meet the need to provide adequate numbers of teachers * * * " and thereby establishes the overall criterion of need; and second, section 172(c) (7) requires the Commissioner to determine, annually, the areas of teaching where there is need of additional teachers and to award the fellowships, preferentially, for study in those areas. The amendments will help to assure that the limited funds available to the fellowship program are used where they are most needed.

§ 105.432 *Categories of fellows.*

Comment. A commenter advised that in paragraph (a) of § 105.432 the word "including" be changed to "other than" on the grounds that if a person has already been certified to teach vocational education, there is no need for additional training.

Response. There is nothing in the statute or its history to suggest that a person who has been a teacher of vocational education in a field where there is no longer employment could not apply for a certification fellowship in order to be able to work in a field where there is need for teachers. Therefore, no change is made in the regulation.

Comment. Another commenter urged that the parenthetical expression in paragraph (a) of § 105.442 be changed to read "(including other thirteenth and fourteenth year programs)." The rationale was that there are hundreds of educational programs at the thirteenth and fourteenth year levels which

are not in community or junior colleges and where there are teachers in a variety of fields who should be eligible for consideration as applicants for certification fellowships.

Response. The recommendation is accepted. It seems reasonable to include as potential beneficiaries teachers in all programs at the thirteenth and fourteenth grade levels, rather than only those designated as junior or community colleges. The recommendation is particularly valid because many of the "other" programs are in technical and vocational education. The regulation is changed accordingly.

§ 105.434 *Role of the State boards.*

Comment. A commenter feared that State boards might be inclined to favor certified teachers, and recommended therefore that a more objective procedure be adopted for reviewing applications.

Response. All applications will be objectively reviewed by the Commissioner, who customarily uses teams of persons drawn from both inside and outside the Office of Education for this purpose. The review by the State board (with advice from the State advisory council and other agencies and representative individuals) will provide valuable additional input to the Commissioner's review of the applications. No change is made in the regulation.

§ 105.434 *Advice from others.*

The recommendation regarding § 105.305 (b), that the State board should transmit to the Commissioner the full statements of advice about applications rather than a mere summary of that advice, was found to be equally applicable to the certification fellowships program. Accordingly, § 105.434 (b) is amended to correspond to the changes made in § 105.305 (b).

§ 105.440 *Eligibility of institutions.*

Comment. A commenter asked generally about the difference in stringency of criteria for eligibility of institutions to participate in the Leadership Development Program and the Certification Fellowships Program.

Response. The requirements for institutional participation in the Leadership Development Program (§ 105.311) are for work at the level of graduate study and are therefore much more demanding than the requirements for the baccalaureate level fellowships program.

§ 105.441 *Priority to areas of need.*

Comment. A commenter noted the omission in the regulation of the language in Section 172(c) (7) which requires the Commissioner to give priority in the awarding of fellowships to those which are focused on the designated areas of need for vocational education teachers. The commenter requested that the omission be corrected.

Response. In view of the omission, the recommendation is accepted. Section 105.441 (a) is amended by the addition of this language: "and will, to the maximum degree possible, award fellowships under § 105.432 to applicants seeking to become teachers in the areas identified."

§ 105.442 *Emphasis on areas of need.*

Comment. A commenter wanted § 105.442 (a) (2) amended to recognize the emphasis on areas or fields of vocational education where additional vocational educators are needed (as required by § 105.441). The amended text would read, "Past or current skills and experiences in the vocational field(s) in which there is a need for additional educators and * * * "

The same commenter requested the addition of an item (3) to § 105.442: "inability to

find employment in his or her field of previous certification." The rationale was that Section 172(c) (1) includes that qualification, which must therefore have been omitted by inadvertence.

Response. Both recommendations are accepted. The change in § 105.442 (a) (2) serves to emphasize the requirement of § 105.441 of the regulation, and a new subsection (3) under § 105.442 (a) has been added which reads "inability to find employment in his or her field of previous certification."

§ 105.443 *Emphasis on the handicapped.*

Comment. A commenter recommended that the application review criterion related to national need (paragraph (e) of § 105.443) be strengthened by adding special education for the handicapped to paragraph (e) of § 105.440 as a part of the undergraduate program of vocational education.

Response. The Act requires that the undergraduate program of vocational education have adequate support services and disciplines, but does not go beyond suggesting which support services and disciplines shall be included. Since special education for the handicapped is a critical program element, the recommendation is accepted and § 105.440 (e) is changed accordingly.

§ 105.443 *Additional review criteria.*

Comment. A commenter recommended that a fourth category, "women," be added to the list of groups meriting special attention under paragraph (e) of § 105.443, *National need*.

Response. Because of the strong emphasis in the Act on eliminating sex bias and sex stereotyping, the recommendation is accepted. The initial sentence of the paragraph is modified to read " * * * with particular reference to the elimination of sex stereotyping and to working with the following populations." Further support for this change is found in § 105.441, which provides that the Commissioner will identify areas of teaching in vocational education where there are or will be shortages of personnel. Also a reasonable assumption may be made that there is a shortage of women teachers and of persons capable of teaching women in many areas of vocational education.

Comment. A commenter asks that a fourth category be added to paragraph (f) of § 105.443 to favor applicants who desire to be trained in a "nontraditional" teaching field.

Response. The recommendation is accepted. H.R. Report No. 94-1085, p. 55, supports this non-traditional emphasis which may be interpreted to mean women (or men) teaching in fields traditionally reserved to the other sex, and also to mean any person teaching in a new field or a field not commonly taught. The new fourth item has been added to § 105.443 (f) which reads as follows: "(4) The applicant's intention to become certified in a vocational field not traditionally open to persons of the applicant's sex, or to become certified in a new field or one not commonly taught."

§ 105.443 *Weighting of review criteria.*

Comment. Two commenters urged that the weight assigned to criterion (a) *Academic ability* be increased to 30 points and the weights for criterion (b) *Vocational skills* be increased to 40 points, with corresponding reductions in the weights assigned to other criteria. The rationale was that criteria (a) and (b) are by far the most important.

Response. Due to the overall importance of criteria (a) and (b) the regulation is revised to increase criterion (a) to 25 points and criterion (b) to 35 points, and criterion

(c) *Communication skills* is reduced to 15 points.

SUBPART 4—EMERGENCY ASSISTANCE FOR REMODELING AND RENOVATING OF VOCATIONAL EDUCATION FACILITIES

§ 105.502 Eligible applicants for emergency assistance for remodeling.

Comment. Commenters indicated that the legislative history does not sustain the argument made on page 18549 of the preamble to the NPRM that the bill, as enacted into law, was expanded to include all LEAs as eligible applicants; to the contrary, they maintain that only LEAs "in urban and rural areas" are eligible and recommend that § 105.502 be amended accordingly.

Response. The recommendation is accepted. Congressional intent indicates that only urban and rural LEAs are eligible under this program, and that suburban LEAs are not eligible. Section 105.502 is amended to limit eligibility to LEAs in urban and rural areas and definitions on "urban" and "rural" have been added. Since these definitions apply only to the emergency facilities program, they are not repeated among the definitions of general applicability in Appendix A.

§ 105.504 Functions of the State board in relation to applications for emergency assistance for remodeling.

Comment. A commenter asked what the State board must do in relation to applications for LEAs for emergency assistance for remodeling and renovation. The commenter questioned whether the State board makes the decision on funding in the State and suggested that the State board's functions be specified in the regulation.

Response. Section 193(a) of the Act requires that the LEA send its application to the Commissioner through the State board. This requirement is repeated in § 105.504 of the regulation. Section 193(a) of the Act requires that the application contain "such other information as the State board determines to be appropriate." This requirement is repeated in § 105.503(g) of the regulation. Thus, the Act and the regulation require the application to be sent to the State board and require that when the application is sent on by the State board to the Commissioner, it contain whatever additional information the State board considers necessary. The State board should review the application and ask the applicant to add to its application any information which the Commissioner will need for decision. The decisions on awards must be made by the Commissioner. Since § 105.503(g) follows the Act and gives the State board wide leeway in requesting any additional information it considers appropriate, no change is made in the regulation.

§ 105.505 Emergency assistance for remodeling.

Comment. A commenter asked what is meant by "emergency assistance for remodeling" and whether the program is limited to assistance after a natural disaster or to assistance for renovation where local tax efforts have been insufficient.

Response. The program of "emergency assistance" is not limited to assistance for remodeling after a natural disaster. The program is a special four-year program of assistance for remodeling in urban and rural areas which was added after Congress heard testimony of "the inadequacy of facilities in urban and rural areas." (Senate Report No. 94-882, p. 88.) As to assistance where local tax efforts have been insufficient, section 193(b)(1) of the Act stresses as the first criterion the need for Federal assistance. Applications will, under § 105.505,

be ranked according to the relative need for assistance as determined by the criteria in § 105.505(b). No change is made in the regulation.

§ 105.505(b)(8) Criteria for award of emergency assistance for remodeling.

Comment. Commenters suggested that criterion (8) in § 105.505(b) for review of applications submitted to the Commissioner for emergency assistance for remodeling should be deleted; five points should not be given for evidence that the proposed facilities "complied with the law and did not result in sex discrimination or bias against the handicapped."

Response. The recommendation is accepted. Criterion (8) is deleted and the five points are added to criterion (1), giving a maximum of 17 points for evidence of the age or obsolescence of the facilities for which Federal assistance is sought. Since it is a requirement of law that educational facilities not discriminate on the basis of sex or discriminate against the handicapped, it is not reasonable to give five points for evidence in the application that these requirements of law have been met. For that reason, criterion (8) is deleted. Applications will be reviewed, of course, to make sure that the proposed remodeled facilities do not result in discrimination on the basis of sex or handicap.

SUBPART 5—BILINGUAL VOCATIONAL EDUCATION

§ 105.604(a) Submission of applications.

Comment. A commenter suggested that in order not to delay the submission of applications they should be submitted simultaneously to the Office of Education and to the State Board for Vocational Education, and that the State board be given 30 days following the closing date for applications to submit its comments to the Office of Education.

Response. The comment is accepted. The procedure set forth in § 105.604(a) is for the applicant to submit a copy of the application to the State board for comment. Since a copy would be submitted to the board, it was implicit in this regulation that the original application be submitted directly to the Commissioner. The regulation reflects this procedure. In addition, the regulation is amended to require that the State board submit its comments to the Commissioner within 30 days following the closing date for applications.

§ 105.611 Bilingual Vocational Instructor Training Program.

Comment. A commenter recommended that the Commissioner make an effort to simplify the various teacher training programs within the Vocational Education Act and also to develop an effective means of coordinating these programs with similar teacher training programs administered by the Office of Education. This commenter contended that, without simplification and coordination, American education will be confronted with overlapping and ineffective management.

Response. The Vocational Education Act contains three separate authorities for teacher training programs.

The Vocational Education Personnel Training set forth in § 104.771 is a State-administered program. The Bilingual Vocational Instructor Training Program in § 105.611 addresses a specific need to improve the overall Bilingual Vocational Training Program. The Vocational Education Leadership Development Program in § 105.301 allows experienced vocational educators to spend full time in advanced study of vocational education. In view of the fact that one program lies exclusively within the domain of the State, and the other two discretionary programs address separate objectives in—as a

general rule—separate institutions, it is not feasible to consolidate or simplify the three programs. Therefore, no change is made in the regulation.

APPENDIX A

DEFINITION

Comment. One commenter strongly supported a comment recorded in response to the NOI that the definition of vocational education should be broadened to include guidance elements and thus reduce the need for funding guidance as a supportive service.

Response. While there is merit in the comment, the definition of vocational education in the Act (Sec. 195(1)) does not include vocational guidance and counseling. No change is made in the regulation.

APPENDIX—"COOPERATIVE EDUCATION."

Comment. A commenter recommended expanding the definition of "cooperative education" to add two requirements that the program:

(1) "employs and compensates student-learners in conformity with Federal, State, and local laws and regulations in a manner not resulting in exploitation of the student-learner for private gain, and

(2) "is conducted in accordance with written training agreements between local educational agencies and employers."

Response. While the recommendation raises two very important points, the definition of "cooperative education" comes directly from section 195(18) of the Act and is not changed. The recommendations are added as requirements in the Cooperative Vocational Education Programs in § 104.531 as new paragraphs (c) and (d).

APPENDIX—"CURRICULUM MATERIALS."

Comment. A commenter suggested as an alternative definition of "curriculum materials" the following:

"Curriculum materials" means instructional resources both print and non-print, used in any teaching and learning process designed to prepare persons for employment or to upgrade the competencies of persons previously or presently employed in any occupational field."

Response. While the proposed definition has much merit, particularly in not limiting curriculum materials to printed materials, the definition in the Appendix comes from section 195(19) of the Act with only slight modification. No change is made in the regulation.

APPENDIX—"FINANCIAL ABILITY."

Comment. A commenter recommended that a definition of "financial ability" be added, to define the term as used in section 106(a)(5)(B)(1) of the Act.

Response. The recommendation is accepted. A definition of "financial ability," taken from the House Report (H. Rept. No. 94-1085, p. 34) is added.

APPENDIX—"HANDICAPPED."

Comment. Many commenters objected to that part of the definition of handicapped which included "learning disabilities to the extent the disability is a health impairment," pointing out that most learning disabilities (LD) are not health-related problems at all, but are learning-related problems (perceptual handicaps, brain injury, dyslexia or developmental aphasia). Commenters recommended that the definition in the Appendix to the Vocational Education Act should conform to the definition in the Education of the Handicapped Act, Pub. L. 94-142 and the regulations thereunder.

Response. The Technical Amendments (Pub. L. 95-40) conformed the definition of "handicapped" in the Vocational Educa-

tion Act to that in the Education of the Handicapped Act. The amended definition includes "specific learning disabilities" as a handicapping condition. The definition of "specific learning disabilities" will be consistent with the definition finally promulgated by the Commissioner under the Education of the Handicapped Act. It will be necessary to look to the regulations under the Education of the Handicapped Act as published in final form for the definition of "specific learning disabilities."

APPENDIX—"HIGH SCHOOL."

Comment.—A commenter recommended a definition of "high school" be added to replace that of "secondary programs."

Response. The recommendation has been accepted by adding the definition of "high school program" and revising the definition of "secondary program" as follows:

"High school program" means vocational education for persons in grades 9 through 12.

"Secondary program" means vocational education for persons in secondary grades as defined by State law.

APPENDIX—"INSTRUCTIONAL TECHNOLOGY."

Comment. A commenter objected that the definitions do not include a definition of "instructional technology" since instructional technology "is playing an ever increasing role in the armed services, industry, government, medicine and the whole of education." No proposed definition was included in the comment.

Response. While there are many terms which could be defined, the Appendix contains only definitions of terms which must be defined for interpretation of the Act or

the regulation. A definition of "instructional technology" is not necessary for interpretation of the Act or regulation, and for that reason, is not added to the Appendix. No change is made in the regulation.

APPENDIX—"LIMITED ENGLISH-SPEAKING ABILITY."

Comment. Several commenters have recommended that a definition of "limited English-speaking ability" be added, to define in the Appendix the term as it is used in §§ 104.303(b)(2) and 104.317(a)(2) as to the 20 percent set-aside part of which is used for persons of limited English-speaking ability.

Response. The recommendation is accepted. A definition of "limited English-speaking ability" (LESA) has been added in its alphabetical order in the Appendix. The definition is that used in section 703(a)(1) of the Bilingual Education Act, 20 U.S.C. 880b-1. This definition will explain the term as used in §§ 104.303(b)(2), 104.313(a)(2) and 105.601.

APPENDIX—"POSTSECONDARY PROGRAMS"—
CERTIFICATE OF COMPLETION

Comment. Many commenters suggested adding to the definition of "postsecondary programs" those programs leading to a certificate of completion of hours of study or certificate of completion of a series of courses.

Response. The House Report (H. Rept. No. 95-1085, p. 48) indicates that Congress did not intend that persons working toward certificates of completion should be considered under the definition of "postsecondary programs." For that reason the suggestion was not accepted. No change is made in the regulation.

APPENDIX—"SECONDARY PROGRAM"

Comment. A commenter urged that the word "usually" be dropped from the definition of "secondary" and that the grades be specified as "beginning with grade 9 and ending with grade 12."

Response. The definition of "secondary program" has been rewritten to leave to determination by State law the span of grades considered as "secondary." A definition of "high school" has also been added to the Appendix.

APPENDIX—"VOCATIONAL EDUCATION"—
GUIDANCE

Comment. A commenter strongly urged that the definition of vocational education should be broadened to include guidance elements and thus reduce the need for funding guidance as a supportive service.

Response. While there is merit in the comment, the definition of vocational education in the Act (Sec. 195(1)) does not include vocational guidance and counseling. No change is made in the regulation.

APPENDIX—"VOCATIONAL INSTRUCTION"

Comment. A commenter objected that the definition of "vocational instruction" does not include planning, assessment, and evaluation.

Response. Planning, assessment, and evaluation are not elements of the statutory definition of "vocational instruction." For that reason they should not be included in the definition of "vocational instruction" in § 104.512 or in the Appendix. No change is made in the regulation.

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